



AGENDA

Phone: 541-682-5481
www.eugene-or.gov/pc

Meeting Location:
Sloat Room—Atrium Building
99 W. 10th Avenue
Eugene, OR 97401

The Eugene Planning Commission welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hour notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hour notice. To arrange for these services, contact the Planning Division at 541-682-5675.

MONDAY, APRIL 21, 2014 – REGULAR MEETING (11:30 a.m. to 1:30 p.m.)

11:30 a.m. I. PUBLIC COMMENT

The Planning Commission reserves 10 minutes at the beginning of this meeting for public comment. The public may comment on any matter, **except for items scheduled for public hearing or public hearing items for which the record has already closed.** Generally, the time limit for public comment is three minutes; however, the Planning Commission reserves the option to reduce the time allowed each speaker based on the number of people requesting to speak.

11:40 a.m. II. APPEAL OF HEARINGS OFFICIAL DECISION: THE RETREAT (PDT 13-1/SDR 13-1) - DELIBERATIONS

Staff: Alissa Hansen

1:15 p.m. III. ITEMS FROM COMMISSION AND STAFF

- A. Other Items from Staff
- B. Other Items from Commission
- C. Learning: How are we doing?

Commissioners: Steven Baker; John Barofsky; Jonathan Belcher; Rick Duncan; John Jaworski (Vice-Chair); Jeffery Mills; William Randall (Chair)

AGENDA ITEM SUMMARY
April 21, 2014

To: Eugene Planning Commission

From: Alissa Hansen, Eugene Planning Division

Subject: Deliberations on an Appeal of the Hearings Official Decision for the Retreat Tentative Planned Unit Development and Standards Review (City Files PDT 13-3 & SDR 13-1)

ACTION REQUESTED

To deliberate on an appeal of the Hearings Official's decision denying a tentative planned unit development and concurrent standards review application for a 162 unit multi-family development, and to take action to affirm, reverse, or modify the approval.

BRIEFING STATEMENT

Following the April 1, 2014 public hearing on this appeal, the Planning Commission's task is to deliberate on the appeal issues raised, and issue a final decision on whether to affirm, reverse, or modify the Hearings Official's decision to deny the applications. The Planning Commission's decision must be made in accordance with the procedures for appeals at EC 9.7650 through EC 9.7685, which limit consideration to the existing evidentiary record and issues set out in the appellant's written statement.

BACKGROUND

The applications subject to this appeal are a tentative planned unit development for a 162 unit multi-family development (with attached and detached housing), a clubhouse and outdoor swimming pool, open space and related infrastructure in the R-1 Low Density Residential zone, and concurrent standards review approval to allow for a sanitary sewer line and bicycle/pedestrian path within a portion of the /WR Water Resources Conservation zone area and for stormwater collected from impervious surfaces to discharge into a stream/wetland covered by the /WR conservation area.

The property subject to the tentative planned unit development is an approximately 22 acre vacant parcel, located south of Laurel Hill Drive and Interstate-5 (I-5) and east of Augusta Street. Moon Mountain Drive bisects the property in the southeast portion. In addition to this property, two EWEB owned lots are included in the concurrent standards review application. These lots are located to the north and northwest of the subject property, and consist of a combined 2.5 acres. The northernmost lot is vacant and has frontage on Laurel Hill Drive. The westernmost lot contains a EWEB electrical substation and has frontage along Augusta Street. The Hearings Official's decision also includes a summary on pages 6-7, with more information about site characteristics and specifics of the applicant's proposal. A reduced version of the applicant's site plan is also provided for reference as Attachment A.

The Hearings Official held the initial public hearing on this request on December 18, 2013. Following the hearing and open record period for additional testimony, the Hearings Official denied the applicant's tentative planned unit development and concurrent standards review applications on February 7, 2014. The applicant's concurrent request for a traffic impact analysis was approved but is not subject to this appeal. The Hearings Official's decision is attached for reference (see Attachment B).

APPEAL

On February 19, 2014, an appeal was filed by Micheal Reeder, Attorney for the applicant (Landmark Property Holdings). The appeal statement identifies seven primary assignments of error in the Hearings Official's decision, which address generally two main areas of concern: compatibility and physical impacts. The appeal statement was provided as an attachment to the meeting materials for the April 1, 2014 public hearing.

Following the April 1, 2014 public hearing, the record was left open until April 8, 2104 for additional testimony and until April 15, 2014 for applicant rebuttal. The full record has been provided to the Planning Commission separately, including all testimony, evidence and application materials to date. During the public hearing and the open record period, new evidence was submitted. The acceptance of new evidence pertaining to the appeal issues is not allowed pursuant to the appeal procedures at EC 9.7655(2). As a preliminary matter, the Planning Commission will need to take formal action to exclude these items from the record. A summary of the submittals containing new evidence is provided in Attachment C.

DELIBERATIONS

To facilitate the deliberations, staff has provided a more detailed summary of the appeal issues in Attachment D, with references provided to relevant findings in the Hearings Official's decision, the appeal statement, and other related evidence or testimony in the record. The summary also provides some initial suggestions for how the Planning Commission might address each appeal issue, in deciding whether to affirm, reverse or modify the Hearings Official's decision to approve the application. Staff believes that Appeal Issue 1 is the best place to start deliberations, as it is the threshold question of whether or not the proposed level of multi-family dwelling units is consistent with the Laurel Hill Plan. As deliberations progress, the Planning Commission may want to bundle similar appeal items.

ATTACHMENTS

- A. Applicant's Site Plan (reduced copy)
- B. Hearings Official's Decision
- C. Preliminary Issues: Evidentiary
- D. Summary of Appeal Issues

FOR MORE INFORMATION

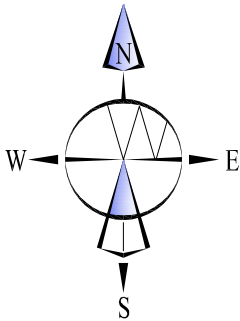
Please contact Alissa Hansen, Senior Planner, Eugene Planning Division, by phone at (541) 682-5508, or e-mail at alissa.h.hansen@ci.eugene.or.us

SITE DATA:

SITE AREA:	21.84 AC
DWELLING UNITS:	162
DENSITY:	7.42 DU/AC
AREA ABOVE 500' ELEV.:	10.39 AC
UNITS ABOVE 500' ELEV.:	40
DENSITY ABOVE 500 ELEV.:	3.85 DU/AC
TOTAL BEDROOMS:	606

PARKING BREAKDOWN:	SPACES (PKG:BR)
OFF-STREET:	302* (0.50)
GARAGE:	26 (0.04)
DRIVEWAY:.	53 (0.09)
GRASS-PAVE:	144 (0.24)
ON-STREET:	38 (0.06)
TOTAL:	563 (0.93)

*INCLUDES 11 ADA SPACES



RETREAT at EUGENE

MOON RIVER DR. - EUGENE, OREGON
±21.84 ACRES

ENGINEERING • SURVEYING
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2470 Daniells Bridge Road, Suite 161
Athens, Georgia 30606
P. 706.310.0400
F. 706.310.0411

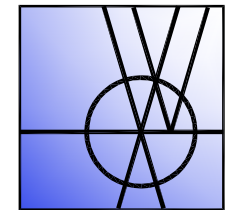
www.gaplaning.com

PLAN TYPE:
REZONE PLAN

SCALE:
1"= 150'

PROJECT NO:
12098

DATE:
11/14/13



**Williams
& Associates**

**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

Application File Name (Numbers):

PDT 13-3, TIA 13-5 and SDR 13-1

Applicant's Request:

Tentative Planned Unit Development approval for a 162 unit multi-family development, a clubhouse and outdoor swimming pool, open space and related infrastructure (PDT 13-3); concurrent Traffic Impact Analysis approval (TIA 13-5), and concurrent Standards Review approval (SDR 13-1) to allow for a sanitary sewer line and bicycle/pedestrian path within a portion of the /WR Water Resources Conservation zone area and for stormwater collected from impervious surfaces to discharge into a stream/wetland covered by the /WR conservation area.

Subject Property/Location/Owner:

Tax Lot 101 of Assessor's Map 18-03-03-00, approximately 22 acres, owned by Marcia J. Stevens Trust (David LaFollette, Trustee)

Tax Lots 900 and 1000 of Assessor's Map 18-03-04-11, approximately 2.5 acres, owned by Eugene Water and Electric Board (subject to Standards Review application only).

Located South and west of Laurel Hill Drive/I-5, east of Augusta Street and north of Moon Mountain Dr.

Relevant Dates:

PDT and SDR applications originally submitted on August 7, 2013; supplemental information submitted September 12, 2013; deemed complete on September 24, 2013; TIA submitted and deemed complete October 7, 2013; most recent revised application materials submitted on November 26, 2013; public hearing held on December 18, 2013. Record closed on January 24, 2014.

Applicant:

Wes Rogers, Landmark Property Holdings

Applicant's Representatives:

Jon Williams

Peter Miller, KPFF Consulting Engineers

Michael Reeder

Lead City Staff:

Alissa Hansen, Senior Planner, Eugene Planning Division, Phone: (541) 682-5437

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on December 18, 2013. At the hearing the Hearings Official stated he had no conflicts of interest or *ex parte* communications to disclose, and made all the required statements under ORS 197.763. No person objected to the Hearings Official conducting the hearing. The following is a summary of testimony and evidence submitted at the hearing and subsequent open record period and is not intended to be a complete list of evidence in the record.

December 18, 2013 Public Hearing

At the December 18, 2013, public hearing staff provided an overview of the staff report and highlighted certain aspects of the application. Staff recommended denial primarily due to visual impacts related to the bulk, scale and height of the proposed apartment complexes, and the relative amount of paving associated with the proposal.

Jon Williams testified on behalf of the applicant. He provided a PowerPoint presentation that summarized the applicant's revised application dated November 26, 2013. He stated that the overall density of the project would be 7.4 units per acre with most of the units being clustered toward the middle of the subject property. He estimated that the design of the site allowed for open space retention of between 65 and 75 percent of the site. He noted that a parking space study had been done resulting in an estimated 0.85 parking spaces per bedroom for the project. He indicated the applicant's willingness to make a payment toward transit facilities related to the project to better accommodate bus service.

Randy Nishimura, the project architect, provided testimony on the visual impact and scale of the project as viewed from Laurel Ridge Drive, Moon Mt. Drive and Verdenhill Drive. He stated that of all the units proposed, Unit 7 would be the tallest at 37 feet above grade. He submitted perspectives depicting the proposed development from those locations. He stated that in his professional opinion the bulk of the buildings were located downhill wherever possible so that the view from the street would be minimized.

David Dougherty, the project landscape architect, provided a PowerPoint presentation showing renditions of how the existing tree canopy would reduce the visual impacts and mitigate the bulk of the proposed apartment complexes.

Micheal Reeder, attorney for the applicant, submitted a hearing memorandum and testified on some of the points made in that memorandum. He argued that the density and intensity of development in the middle section of the subject property was necessary in order to gain the open space at the higher elevations of the site. He stated that the PUD criteria applicable to the application allowed for a project that clustered the apartment buildings to gather, so long as the complexes blended with the site and surrounding area rather than dominating it. He disagreed with the staff report on the issue of visual impacts, bulk and height, because there was no baseline for making the subjective determination on those issues. By comparison, he

argued that the R-1 zone allows 14 dwelling units per acre below the 500 foot elevation level, and five units per acre above 500 foot elevation. While staff found that 606 proposed bedrooms were too many for site, he argued that the R-1 zone could allow a fairly dense development with little open space left as a result.

One participant testified as a neutral party. He stated that multiple accidents had occurred on Laurel Hill Drive due to its poor condition and steep grade. He recommended that it be widened and repaired prior to construction so that construction equipment and trucks could more safely traverse the road. A second neutral participant, Ben Hanson, explained his research on travel speeds and the relationship to increased traffic fatalities. He stated that for every 5 to 10 mph increase in travel speeds there was a correlation to approximately a 28% increase in traffic fatalities. He opined that college students have been documented to consistently drive over and above the posted speed limit, and that an associated increase in traffic fatalities could be expected if the proposal were approved.

Charlie Frazier, speaking on behalf of the Laurel Hill Valley Citizens ("LHVC"), submitted a bound response to the application and staff report with numerous attachments and color photographs. HE-13. He provided a general overview of the neighboring land owners' objections to the proposal. In particular he argued that the proposal conflicts with the Laurel Hill Plan ("LHP"), Policy 1 in several respects. Primarily, that the LHP does not allow apartment complexes comprising more than 32 units. From his perspective, the LHP made a compromise by allowing multifamily development in the area, and that compromise was that the apartment complexes be 32 units or smaller. In addition, he argued that the LHP's dispersal policy (LHP Policy 1.c) requires multi-dwelling units be separated from and not abutting existing apartment complexes. He stated that the existing Oak Creek Townhomes are directly adjacent to the subject property, and therefore, LHP Policy 1.c is violated.

Bill Blix testified on the compatibility standard in EC 9.8320(13). He argued that at 606 bedrooms the proposal resembled university dorms, which would be disproportionately populated with student renters which is significantly dissimilar to the surrounding area populated by owner-occupied single dwelling detached housing. He argued that the dictionary definition of "compatible" showed that proposal was too different to blend harmoniously with the existing uses.

Seamus Corbett argued that the proposal violates EC 9.8320(6) because it creates unsafe conditions for pedestrians due to the proposed 38 on-street parking spaces proposed Moon Mt. Drive, and because persons desiring to walk or access mass transportation would be forced to walk down the narrow shoulder of Laurel Hill Drive. He also argued that the proposed Club House on Moon Mt. Drive did not include a crosswalk and was located along a dangerous curve in that road which created unsafe conditions for both drivers and pedestrians.

Kay Downy testified on the potential for light pollution. She argued that the proposal will bring numerous new streetlamps within the development and along the proposed bike paths. Those

new light fixtures would add lots of lumens to the area, which would adversely impact the dark night atmosphere currently existing in the neighborhood.

Tom Halferty testified to the possible existence of Upper Willamette Chinook and native coastal cutthroat in Laurel Hill Creek. He argued that EC 9.8320(4)(a) required protection of these species, and that the proposal would likely convert the Goal 5 wetland on site to a municipal use because storm water from the site would be directed to this wetland. Even if the storm water could be adequately treated before entering the wetland, he argued, the storm water design of the site was not adequate to accommodate large storm events which would likely exceed the capacity of the system at least two times per season dumping untreated storm water into the subject wetland. He also raised concerns that the flow “disapaters” located in or near the wetland in the northwest corner of the subject property constituted a “fill” of that wetland.

Gunnar Schlieder provided a PowerPoint presentation, and testified on various aspects of the proposal. As a starting point, he disputed the accuracy of the architectural renderings submitted by the applicant depicting views of the proposed development. He also displayed a photo montage constructed by LHVC of the same area. He had the following criticisms of the applicant's renderings: 1) the views depicted are too distant from nearby homes, 2) the Oak Creek Townhomes residents will see an immediately adjacent 12 foot retaining wall, 3) the renderings did not consider immediately adjacent residential dwellings, 4) the intervening tree canopy is composed of deciduous trees which will not have leaves for approximately 1/2 of the year, and 5) the houses proposed for the ridge near the intersection of Laurel Hill Drive, and Moon Mt. Drive will be visible above the trees which are growing below the ridge line.

He went on to argue that the nature of the applicant's rental agreements with college students, or others, for a bedroom units within the multi-dwelling complexes meets the definition of a “single room occupancy” building as set forth in EC 9.0500. Since many of the proposed buildings (approximately 26) have more than nine residential rooms associated with them, they constitute SRO's. He argued that SRO's are not allowed in the R-1 zone.

As an alternative argument, he stated that the middle section of the development is not a “cluster” as allowed by the EC or South Hills Study. He described the proposal as a huge and unbroken group of structures that both physically and visually exceeded the concept of “clustering” as allowed by the PUD provisions. For the same reason, he argued the development violates the South Hills Study restrictions on grading. He argued that based on the applicant's grading plan, approximately 76 percent of the site would be disturbed, cut and or filled. These cuts, from a geotechnical perspective, would pierce the clay soil layers on the sloped development site allowing stormwater to enter the groundwater system under the clay base which would then convey water to the wetland contributing to the wetland being overwhelmed with groundwater.

He also argued that the proposal violates the tree preservation components of EC 9.8320(4)(b). He argued that a disproportionate percentage of large and healthy trees would be eliminated

from the site. He also argued that more healthy trees would be removed than trees in fair or poor health.

As a final matter, he argued that the project essentially proposes two through street connections from Laurel Ridge Drive to Moon Mountain Drive traversing the slope between the proposed apartment complexes. Therefore, the proposal must meet street conductivity standards but it fails to do so.

Jerry Kalina raised concerns about the safety of Laurel Hill Drive, particularly in snowy conditions. He also argued that the proposal did not limit the number of residents per bedroom, and that more than one occupant per bedroom should be expected and could increase the number of vehicles anticipated for the development. He also raised concerns that although the applicant as owner might be able to impose rules regulating the behavior of college students and other residents, if the development were sold in the future those rules and regulations might be eliminated or changed.

Jim Potterf provided his historical perspective of the area having lived near the intersection of Laurel Hill Drive and Moon Mt. Drive. It was his memory that both of these roads were intended to be temporary based on development needs in years past, but that once built they became permanent in nature.

Kan Dhillon testified on the general incompatibility of the proposal in connection with EC 9.8320(13). He raised concerns about an increase in crime, due to college students potentially causing those crimes, or being the victim of crime. He raised concerns about noise in connection with construction of the development, college parties, loud music, and visitors to the site. These impacts, he argued, cause a loss of privacy and provide the opportunity for trespass and littering or surrounding property owners.

Attorney Peter Livingston, representing the owner of Oak Creek Townhomes, submitted a written comment and provided testimony on the lack of adequate screening and separation between the proposed development and his client's apartment complex. He stated that the retaining wall and proposed privacy fencing would not be adequate to meet the City's standard. He also raised concerns about storm water that would be directed to an on-site ditch impacting his client's property. He argued that the record did not contain sufficient evidence of the capacity of the ditch and whether it could adequately convey storm water once the proposal was built.

Jeff Parker of the NW Youth Corps located near the subject property testified that he hoped that the proposal would evolve into a development that was more compatible with the surrounding neighborhood.

Jon Williams provided some brief rebuttal comments for the applicant. On the topic of light pollution he distinguished between the measurement of light in lumens and the impact of light cast on the ground surface which is measured in foot candles. He stated that the proposal

sought minimum impact for the streetlamps in terms of foot candles. He also offered to provide privacy fencing and or screening for the bike and pedestrian paths including where those paths entered on Augusta Street.

Mr. Reeder made some concluding remarks. He stated that the applicant had talked with Mr. Potterf at the beginning of the project to understand his concerns. He also noted that the NW Youth Corps facility had been allowed in the area and by comparison allowed abundant parking areas and impacts similar to or in excess of what could be anticipated by the proposed development. He also indicated that the concerns of the owner of Oak Creek Townhomes had not been expressed until the hearing.

He argued that the project is in the “public interest” as there is no tax credit sought for the development, and that the project helps maintain the current urban growth boundary consistent with the City’s Envision Eugene document. He argued that the R-1 zone should not be interpreted to penalize the applicant by imposing housing densities similar to the existing and neighboring homes which were built many years ago at a much lower density. He expressed skepticism about testimony asserting that driving speeds would increase due to college age occupants living in the proposed development. He also noted that the “dispersal” policy set forth in the LHP represents a non-mandatory criterion.

Open Record Period

At the end of the December 18, 2013 hearing, at the parties’ request, the Hearings Official set an open record period schedule. The record was left open for: 1) argument and evidence on any topic by any party until January 10, 2014 at 5:00 p.m., 2) then until January 17, 2014 at 5:00 p.m. for responsive testimony and evidence to the information submitted before January 10, 2014, and 3) the applicant’s final comment was due January 24, 2014.

Site Characteristics

The subject property consists of approximately 22 acres in one tax lot. The property is vacant and forested, although not densely, with a mixture of coniferous and hardwood forest. According to the applicant, the property was used for agriculture until the 1960s. The property also contains a portion of a protected Goal 5 riparian area and wetland associated with Augusta Creek and Laurel Valley Creek, on the northwestern tip of the property.

The site slopes from the northwestern point up to the southeastern point from approximately 456 feet in elevation to approximately 600 feet in elevation. Laurel Hill Drive forms the northern boundary of the property. To the north of Laurel Hill Drive is Interstate-5 (I-5). Properties to the east are in single family residential use. Moon Mountain Drive bisects the property in the southeast portion. To the south and southeast of the property are single family residences. To the southwest is the former Laurel Hill Elementary School, now owned and used by the Northwest Youth Corps. To the west are single family and multi-family residential uses, and to the northwest is a EWEB electrical substation. Existing overhead electric lines run

north/south and northwest/ southeast through the property.

In addition to the property described above, two EWEB owned lots are included in the Standards Review application being reviewed concurrent with the tentative planned unit development. These lots are located to the north and northwest of the subject property, and consist of a combined 2.5 acres. The lot immediately north of the subject property is vacant, and has frontage on Laurel Hill Drive. The westernmost lot contains a EWEB electrical substation and has frontage along Augusta Street.

Summary of Land Use Applications

Tentative PUD (PDT 13-3): The proposal is a 162 unit multi-family development (detached units and attached units) in 49 residential buildings. A club house, including a fitness center, media lounge and study lounge, and an outdoor swimming pool are proposed as amenities for residents of the development. A mechanical building is also proposed. As noted in the application materials, the proposed development would be marketed towards college students and consist of 606 bedrooms. The proposal also includes 525 on-site vehicle parking spaces, 252 bicycle parking spaces, two bicycle/pedestrian paths providing connections to transit stops on Augusta Street, and over ten acres of open space/tree preservation/landscaped areas. As shown on the applicant's site plans, access to the site is proposed via Moon Mountain Drive, which currently bisects the property at the southeastern corner, and via two connections to Laurel Hill Drive to the north.

PUD approval is required for the proposed development based on applicability provisions at EC 9.8305(1) and (3). The property falls within the boundaries of the South Hills Study, and a portion of the site is between an elevation of 500 feet and 701 feet, is greater than 4 acres in size and has areas containing slopes that exceed 20 percent. In addition, the proposal for multi-family development (three or more dwellings on the same lot) is subject to PUD approval in the R-1 zone, according to EC Table 9.2740.

The PUD process allows for a review of the specific location, design and intensity of a proposed multiple-family development in the R-1 zone to determine, among other things, whether the development is reasonably compatible with adjacent and nearby land uses. Multiple-family development is also required to meet specific development standards at EC 9.5500, which establish design regulations, such as building mass, orientation, articulation, and parking area layouts.

At the same time, the PUD process allows for design flexibility, if the design meets the PUD purpose statements at EC 9.8300, which are intended to achieve flexibility in architectural design, clustering of buildings, and providing for economy of shared services and facilities. Accordingly, the applicant seeks several modifications to development code standards through the PUD process.

Traffic Impact Analysis (TIA 13-5) - A Traffic Impact Analysis (TIA) review is required for any

development that will generate over 100 peak hour vehicle trips. In this case, the applicant's proposed development would generate more than 100 peak hour trips and therefore includes a concurrent TIA application which is subject to approval criteria at EC 9.8680.

Standards Review (SDR 13-1) - A limited range of development, including the construction of streets and private access, can be permitted within protected Goal 5 stream corridors under the Water Resources Conservation (/WR) overlay zone requirements beginning at EC 9.4900. In this case, the proposal requires Standards Review approval, which addresses various setbacks, permitted uses, and related development standards of the /WR overlay zone. The applicant proposes to locate a sanitary sewer line and bicycle/pedestrian path within a portion of the /WR conservation area, and to allow for stormwater collected from impervious surfaces to discharge into the stream/wetland covered by the /WR conservation area. As a portion of the sanitary sewer line and bicycle/pedestrian path are proposed on property owned by Eugene Water and Electric Board (EWEB) those properties are also included in the Standards Review application.

Documents Considered by the Hearings Official

The Hearings Official has considered all the documents submitted by the applicants and other parties prior to the December 18, 2013 hearing, and all the submissions into the record subsequent to the hearing up to and including the applicant's final comment dated January 24, 2014.

Two documents were submitted during the open record period which did not adhere to the Hearings Official's directions. The first is a January 17, 2014 letter submitted by Richard Pastor which was submitted by e-mail at 5:14 p.m. The deadline was 5:00 p.m. The Hearings Official did not consider Mr. Pastor's submission. The second is a January 10, 2014 letter submitted at 5:52 p.m. by Mr. Gunnar Schlieder. Mr. Reeder submitted a January 24, 2014 letter objecting to the e-mail and attachments submitted by Mr. Schlieder. I agree with Mr. Reeder that the submission was untimely as it was not intended, nor was it actually, responsive argument allowed during the period between January 10, 2014 and January 17, 2014. The Hearings Official did not consider Mr. Schlieder's January 10, 2014 e-mail and letter.

Issues Not Relevant to the Applicable Approval Criteria

At both the December 18, 2013 public hearing and in written submissions, there was some testimony that the Hearings Official cannot deem relevant, and therefore, cannot consider as part of this review. This evidence and argument includes:

- Generalized statements of opposition. See December 9, 2013 e-mail from Evan Hughes for example.
- Arguments asserting that a need for student housing must be shown.
- Allegations that the probable student tenants will necessarily bring problems to the area. See December 12, 2013 e-mail from Teresa Roman for example.

- The applicant's position that a minimum of 606 units are necessary to make the project economically feasible. Similarly, assertions by the applicant that the subject property is generally not desirable for development due to its location next to I-5.
- The history of staff and applicant interaction and the change the City planner assigned to the application. HE-11. To the extent that history is accurate, it does not address any applicable criteria and must be deemed irrelevant.

Rules not Considered by the Hearings Official

The applicant has clarified that the "Needed Housing" provisions of EC 9.8325 do not apply to this application. The proposed housing takes the form of a series of multi-dwelling complexes (and some buildings resembling single family dwellings). This form meets both the EC definition of "multifamily dwelling" and the State definition of "needed housing." ORS 197.303(1)(a). However, the provisions of EC 9.8325 only become applicable if the applicant elects to proceed under those provisions. EC 9.8325 allows an applicant to choose the general PUD criteria at EC 9.8320 which is the case for this application. That is what the applicant has done.

Both at the public hearing and in written comment, opponents argued that because the applicant may rent individual rooms in some of the apartment complexes those buildings fit the definition of "single room occupancy" or SRO. They argue that SROs are not allowed in the R-1 zone, and therefore, cannot be allowed as part of the proposed development.

Staff and the applicant disagreed with the opponents arguing that the definition of "multiple family dwelling" is a more accurate description of the proposal than the definition of an SRO. PT-7 and PT-11. The Hearings Official agrees. The applicant noted that the two definitions are subject to a textual as well and contextual analysis. The applicant argues that SROs are grouped with boarding houses, campus housing and dormitories in the zoning districts where those housing types are allowed. In contrast, the applicant argues that "Multiple-Family" dwellings are grouped with other residential uses in EC Table 9.2740. That context demonstrates that multi-dwelling buildings in the R-1 zone are not intended to be treated like SROs. The Hearings Official agrees that the text of the definition of "multiple family" dwelling at EC 9.0500 and the context of multiple family dwellings being treated like other residential uses in EC Table 9.2740 demonstrates an intent that PUDs containing multifamily dwellings not be considered SROs.

Evaluation of Tentative PUD Request

EC 9.8320(1): The PUD is consistent with applicable adopted policies of the Metro Plan.

The oral and written testimony in the record contains abundant discussion of the concept of "bulk" in connection with the proposal. To help reduce the bulk of this final decision, the Hearings Official will note instances where the staff findings are not challenged by relevant argument or credible substantial evidence. Such is the case with this criterion.

The findings of the staff report are sufficient to show compliance with EC 9.8320(1) and the Hearings Official adopts them by this reference.

In addition, the Hearings Official acknowledges both staff's and the applicant's position on the relevance of the Metro Plan designation for low density residential use and the analog R-1 zone designation. The Hearings Official agrees that those designations represent prior legislative decisions by the City Council identifying the appropriate residential density for the R-1 zone. The Hearings Official agrees with the applicant's perspective that the densities allowed in the zone are what they are, and arguments that even lower densities should be imposed on the subject property represent an impermissible collateral attack on those prior legislative decisions.

That being said, the applicant's decision to pursue a PUD subjects the proposal to numerous development considerations which have the effect of reducing overall residential density. The applicant strenuously argues in all the post hearing submissions that the baseline for determining whether the PUD meets the relevant criteria in EC 9.8320 is to compare the proposal to a worst case scenario of full development at the maximum as-of-right densities allowed in the R-1 zone. The Hearings Official agrees with the applicant that EC 9.8300 does provide "a high degree of flexibility in design of the site." However, that flexible design is still subject to the other criteria in EC 9.8320 – many of which require consideration of a proposed PUD's off-site impacts. Setting up full build-out of a site at maximum residential densities (a "worst case scenario" with all the real or imagined negative impacts) as a baseline by which to compare a PUD proposal strikes the Hearings Official as a false choice – and a premise which if adopted would almost always illogically favor a PUD proposal. For example, there is no basis upon which to presume that on a site like the subject property an as-of-right residential development would necessarily cut all the existing trees from the site, or be allowed to create unmitigated negative off- site impacts. Neither the text of the PUD criteria nor any other code provision that the Hearings Official is aware of sets the type of "baseline" that the applicant asserts, and the Hearings Official declines impose that presumption as a basis for reviewing this application.

EC 9.8320(2): The PUD is consistent with applicable adopted refinement plan policies.

Staff Findings - Laurel Hill Plan

The following findings address those policies (shown in *italics*) of the Laurel Hill Plan found to be applicable to the proposed tentative PUD. To the extent that the findings and analysis in the applicant's written statement are relevant, those findings are also incorporated herein by this reference.

Land Use and Future Urban Design

Policy 1: Approval of Valley Development will take into consideration:

a. Density. The appropriate density for residential development shall be determined

based on 1) the provision of the Metropolitan Area General Plan [MetroPlan] calling for an overall density range of one to ten units per acre; and 2) provisions of the South Hills Study, including those limiting density to five units per acre for sites above 500 feet in elevation.

- b. Size. Large apartment complexes (over thirty-two units) are objectionable because their dominance would alter entirely the character of the Valley. Approval of apartment complexes larger than 32 units will depend upon the feasibility of providing adequate urban services, streets, schools, and transportation.*
- c. Dispersal. Planned Unit Developments composed primarily of multiple family dwelling units shall be separated and dispersed and not abutting.*

As noted by the applicant, and under the South Hills Study density standard below, the proposed development will result in a density of 3.8 units per gross acre (40 units over approximately 10.4 acres) for the portion of the site above 500 feet in elevation in compliance with policy (a) above. (The South Hills Study applies to the area above an elevation of 500 feet.) As proposed, density for the entire property is approximately 7.4 units per gross acre (162 units over 21.8 acres), also in compliance with (a) above. It is noted that the South Hills Study provision that limits density to five units per acre and the Metro Plan density provisions both reference gross density.

Regarding (b), this policy states that development take into consideration the size of apartment development by discouraging any apartment complexes greater than 32 units. The policy also states that approval for complexes larger than 32 units will depend on the provision of adequate services. The proposed multi-family development involves various building types ranging from one-dwelling unit to ten unit buildings for a total of 162 units. While it is noted that apartment complexes over thirty-two units are objectionable, it does appear that adequate urban services can be provided. However, it should be noted that the 162 units proposed are well beyond the thirty-two units that are identified as a threshold for acceptability. It is therefore difficult to consider the proposal as being consistent with this policy.

In regards to (c), the policy again states that development take into consideration the dispersal of multi-family dwelling units, noting that planned unit developments composed primarily of multi-family units shall be dispersed and not abutting. To the immediate west of the subject property is a multi-family development that was approved through the planned unit development process (City File PD 71-2). Although the applicant indicates that the subject property does not abut this development, staff notes that the intervening tax lot is part of the approved planned unit development of multi-family development to the west. As such, the proposed development is abutting a multi-family development approved through a planned unit development, which is not consistent with this policy direction.

Policy 1 states “Approval of Valley Development will take into consideration....” Although it is

not clear that this policy constitutes mandatory approval criterion, to extent that it does, staff cannot conclude that this policy has not been met.

Policy 6: The Laurel Hill Plan supports the South Hills Study Standards. In general, alteration of land contours shall be minimized to retain views of natural features and retain as much of the forested atmosphere as possible. Aside from purely aesthetic considerations, these hillsides demand care in development because the topsoil is thin and the water runoff is rapid. Proposed developments shall respect the above considerations. The Valley hillside policy applies to all land with an average slope, from toe to crest, of 15% or greater. (A 15-percent slope is one in which the land rises 15 feet per 100 horizontal feet).

- a. If, in the opinion of the responsible City official, an adverse conservation or geological condition exists upon a parcel of land proposed for a subdivision, or before any major hillside clearing, excavation, filling or construction is contemplated, the requirements of the Uniform Building Code, Chapter 70, Excavation and Grading, and those sections of the code relative to foundation design may be invoked.*
- b. Considerable latitude shall be allowed the developer in the shaping, depth, and required street frontages of lots where it is necessary to preserve the terrain.*

Staff confirms that this policy is not applicable, as the subject property does not have an average slope of 15 percent or greater from toe to crest. Per staff's calculations, the average slope is approximately 10 percent.

Transportation

Policy 3: Street design will reflect the functions of the streets in accordance with their designation as "collector" or "local," and a mandatory street design standard should be avoided. Traffic patterns and street standards shall provide for such uses as public or school bus routes and emergency and service vehicles.

Since this policy was adopted, new street design standards have been adopted into the City's code which provide for a variety of street designs and standards that a developer may choose from depending on the circumstances. The design standards are largely based upon the amount of traffic capacity for the type of street.

No new streets are proposed as part of the development. The applicant is proposing to improve Moon Mountain (the portion that bisects the subject property) to city standards within the current right of way, and provide half-street improvements to Laurel Hill Drive, also within the existing right of way. Both streets are local streets.

Public Works staff indicates that the City's adopted local street standards allow for flexibility while insuring the streets function in accordance with their respective classifications. Street design and function are discussed in greater detail below at EC 9.8320(5). Staff concurs with the applicant's proposal regarding street improvements.

Policy 4: All future construction in the Valley or East Laurel Hill shall include adequate off-street parking to accommodate not only permanent residents but a reasonable number of visitors. Although on-street parking should be discouraged, in some areas pull-out facilities for parking should be developed, particularly where congestions exists.

The proposal includes 525 off-street parking spaces (3.2 spaces per unit or .87 spaces per bedroom), which exceeds the Eugene Code parking requirements for the multi-family developments of 1 space per unit. The proposal also includes 38 new on-street parking spaces along Moon Mountain Drive, which would also accommodate a reasonable number of visitors.

Opponents' Arguments – Laurel Hill Plan

The opponents' arguments are best summed up in their bound submission presented at the December 18, 2014 hearing. HE-13.

Policy 1.b is not met, they argue, because the proposal, at 162 units and 606 bedrooms, is more than five times the 32 unit threshold set forth in the policy. Further, they argue that adequate transportation services are not available to the site because bus service is currently too infrequent to serve the large population anticipated and pedestrian ways to transit stops and toward the University and other parts of the City require walking along Laurel Hill Drive and Augusta Street which have sections without sidewalks or safe crossings.

Opponents argue that Policy 1.c is not met because the proposed PUD would be located next to the Oak Creek Townhomes which is the only apartment complex in the Laurel Hill area.

They argue Policy 3 is not met because: 1) any student residents will not be able to drive to campus because of inadequate parking around the University, 2) transit to the valley is not adequate and no provision for increased bus service has been made, 3) bicyclists will encounter inconvenient bottlenecks, and 4) safe pedestrian access is hampered by the lack of sidewalks in and around the proposed development.

Opponents argue that the Transportation Policies of the LHP are not met because the proposed Club House and units 138 and 139 do not provide any off-street parking.

Applicant's Response – Laurel Hill Plan

The applicant responds generally that the policies set forth in the LHP are not mandatory - citing *Bothman v City of Eugene*, 51 Or LUBA 426 (2006). The applicant's position is that the policy statements in the LHP are "considerations" that must be balanced with the Metro Plan policies requiring higher residential densities to maintain the UGB. PT-11.

As to Policy 1.b, the applicant parses out the mix of single dwelling and attached units arguing that none of the attached multiple family buildings will have more than 32 units. The applicant argues that those units are allowed, even though "objectionable" because all the necessary

services are present, including bus service which could be increased with a petition to the Lane Transit District (“LTD”). The applicant also provides information on the existing conditions in the Laurel Hill area for pedestrian traffic, arguing that sidewalks are lacking in several areas and that pedestrians will have access to transit stops despite having to walk a fairly short distance without sidewalks. PT-11.

On Policy 1.c, the applicant asserts that it is a non-mandatory criterion, and that the policy is directed only toward PUDs where “multiple dwelling units” predominate. The applicant breaks down the proposal into single-family, duplexes, 4-plexes, 6-plexes and multi-unit buildings. PT-11. According to the applicant, less than 51 percent of the buildings represent “multiple-family” dwellings as defined by EC 9.0500, and therefore, Policy 1.c is not applicable. The applicant also argues that the Oak Creek Townhouses are not directly abutting because there is a thin intervening parcel, Tax lot 3200. Instead of strictly construing the language of Policy 1.c, the applicant asserts that it should be viewed as guidance.

On the Transportation component of the LHP, the applicant responds that for the 606 proposed rooms, 563 off-street parking spaces are available – more than sufficient to meet the policy. As to the small amount of on-street parking, the applicant essentially argues that it is appropriate for the Club House and along Moon Mt. Drive to mitigate traffic congestion.

Hearings Official Conclusions – Laurel Hill Plan

As an initial matter, the Hearings Official disagrees generally that all the policies in the LHP must be considered non-mandatory. Although the LUBA decisions in *Northgreen Property LLC v. City of Eugene*, and *Botham v. City of Eugene*, cited by the applicant, are directed at similar language in the Willakenzie Area Plan, there is another LUBA holding that is directly on point. In *McGowan v. City of Eugene*, ___ Or LUBA ___ (LUBA No. 92-187, February 18, 1993), LUBA held that refinement plan provisions (the South Hills Study was the subject refinement plan) that require the City to consider various policies were mandatory approval criteria so long as the text of those provisions did not contain qualifying language such as “encourage.” The *Bothman* holding quoted by the applicant in PT-11 is consistent with LUBA’s prior holding in *McGowan*.

The mandatory approval criteria for the South Hills Study (“SHS”) are discussed below. What the *McGowan* decision shows is that the text of LHP Policy 1.b and 1.c are similar to the SHS criteria that LUBA found to be mandatory approval criteria.

Policy 1.b

As to Policy 1.b, the text appears to be mandatory, but not prohibitive of apartment complexes over 32 units. While “objectionable,” complexes over 32 units appear to be allowed so long as urban services, schools, and transportation services are shown to be adequate. The Hearings Official agrees with the opponents that no matter how the proposal is parsed, it is reasonably viewed as a whole as an “apartment complex” and that apartment complex has several times the accepted number of “units” identified in Policy 1.b. Based on the text of Policy 1.b and the

context in the prefatory language in the “Neighborhood Goals” section of the LHP, the Hearings Official concludes that the drafters of the LHP would likely view the applicant’s proposal as far beyond the size of an apartment complex that might be “objectionable” in the Laurel Hill area. However, the qualifying language in Policy 1.b appears to allow any size apartment complex, if urban services are available. On this point the Hearings Official must agree with staff and applicant that even a 162 unit PUD can be allowed consistent with Policy 1.b.

In response to the opponents’ assertions about the lack of adequate transportation facilities, the Hearings Official agrees with the staff findings and incorporates them here. The referral comments identified by staff and the information provided by the applicant regarding LTD service as sufficient to demonstrate that transit can reasonably be provided. The record shows that the applicant is also providing pedestrian and bike pathways to assist in getting individuals to transit stops. The information regarding the fairly short distance pedestrians might not have the benefit of sidewalks is not in and of itself evidence of a lack of pedestrian safety. LHP Policy 1.b is met.

Policy 1.c

The text of Policy 1.c is mandatory stating that in PUDs “multiple dwelling units shall be separated and dispersed and not abutting.” The presence of the word “shall” indicates a mandatory criterion consistent with *McGowan* case cited above. In addition, the word “and” between the terms “separated” “dispersed” and “not abutting” represents three parameters that cannot be collapsed into a single adjacency standard.

The Hearings Official disagrees with the arguments on this policy set forth by the applicant. Policy 1.c by its own terms applies to “multiple dwelling units” which is different than the EC 9.0500 definition of “multiple family” dwellings as argued by the applicant. “Multiple dwelling units” as used in Policy 1.c reasonably includes all the plexs as well as the large (28 dwelling unit) buildings proposed. The proposal is predominated by those multiple dwelling unit buildings as only 10 units will be single family.

While staff and the applicant disagree on whether the Oak Creek Townhomes are technically adjacent, this is of little matter because by any definition the proposal is not “separated” in any meaningful way from the Oak Creek Townhomes. Neither would the proposal allow the two apartment complexes to be “dispersed” in the Laurel Hill area. This proposal places the only two multiple dwelling apartment complexes in the Laurel Hill area in the immediate vicinity of each other. Thus, the proposal is inconsistent with the plain meaning of Policy 1.c which is to separate and disperse those types of residential uses. LHP Policy 1.c is not met.

Staff findings -South Hills Study

The applicability of the South Hills Study is based on the location of the subject site at an elevation greater than 500 feet and south of 18th Avenue. Staff notes that only the easterly portion of the site is above an elevation of 500 feet, and thus these policies only apply to that

portion of the site. As such, the evaluation below is limited to the portion of the site above 500 feet in elevation.

As expressed in the adopting resolution for the South Hills Study (Resolution #2295), the Purpose Statement and Recommendations set forth in the South Hills Study are adopted as policy statements and as a refinement of the Metro Plan, and are intended to be used in making land-use decisions in the South Hills Study area. The Hearings Official should note that some of the South Hills Study requirements have been directly embedded within the applicable tentative planned unit development criteria and application requirements beginning at EC 9.8300. However, several South Hills Study policies are also directly relevant or applicable as mandatory approval criteria in the context of EC 9.8320(2) and are addressed here in greater detail (shown in *italics* below), as well as in the applicant's written statement.

That all proposed developments in the south hills area be reviewed to determine if connecting linkages are possible between various park sites, particularly north of Skyline Park to Hendricks Park and between Blanton Heights and Hawkins Heights.

Based on a review of nearby park sites, staff confirms that providing additional connections is not necessary in this case. The nearest park site is Laurel Hill Park, a neighborhood park, located south of the site, between Augusta Street and Moon Mountain Drive. Access to this park from the proposed development is currently available via Moon Mountain Drive, and additional access will be available via Augusta Street from the proposed bicycle/pedestrian paths. Access to Moon Mountain Park to the southeast, which is part of the City's Ridgeline Trail system, is available via the existing street system. Access to Hendricks Park, a regional park located to the west of the property, is also available via the existing street system.

That in the area east of Friendly Street the maximum level of new development per gross acre be limited to 5 units per gross acre (the maximum figure of 5 dwelling units per gross acre being subject to positive findings under the planned unit development criteria.

The applicant proposes a density of approximately 3.8 units per gross acre on the portion of the site above 500 feet in elevation, consistent with this policy.

That planned unit development procedures be required for development of any parcel over 4 acres in size, characterized by a slope in excess of 20 percent in the area between 500' and 701' in elevation.

The site is over 4 acres in size and is characterized by slopes in excess of 20% in areas between 500 and 700 feet. The planned unit development procedures are therefore required in this instance.

That planned unit development procedures shall be utilized for the following purposes:

1. *To encourage clustering of development in areas characterized by:
 - a.) shallowest slopes;*

- b.) lowest elevations;*
 - c.) least amount of vegetation;*
 - d.) least amount of visual impact.*
- 2. *To encourage preservation as open space those areas characterized by:*
 - a.) intermediate and steep slopes;*
 - b.) higher elevations;*
 - c.) significant amounts of vegetation;*
 - d.) significant visual impact.*

In this case, the planned unit development procedures are being utilized to evaluate the applicant's proposed development, as required. To the extent that these South Hills Study purposes are relevant here, and help to inform the intent of the South Hills Study in the context of applicable planned unit development standards, staff cannot, without further evidence, conclude that those purposes are fully achieved by the applicant's proposed development.

As noted above, the eastern portion of the site is above 500 feet in elevation and thus subject to this policy (See Sheet C5.0 Grading from the August 7, 2013 plan set for location of 500 foot elevation contour). This area includes the steepest slopes, higher elevations and the majority of the significant trees. As shown on the applicant's site plans, this area is proposed for 21 residential buildings (18 one and two family dwellings and three building with 4 to 6 units per buildings) and associated parking, as well as the clubhouse, outdoor pool and maintenance/storage building. The applicant has proposed the majority of the buildings in the area characterized by the lowest elevations and least amount of vegetation, and has proposed the majority of the open space and preservation of significant trees (and therefore the least amount of grading) within this portion of the site.

However, in the context of the remainder of the site, staff has concerns about the amount of grading and significant tree removal required for the siting of five units at the intersection of Moon Mountain Drive and Laurel Ridge, which is the highest elevation of the site and contains the most significant amount of vegetation. While the applicant's revised site plans (November 26, 2013) reduce the amount of bulk/scale and height of buildings in this area as compared to the original site plans (August 7, 2013), the amount of grading and significant tree removal is essentially the same, if not more. Considering the size of the property, and the lack of significant vegetation on the remainder of the site (with the exception of the protected stream/wetland), it is not apparent how the proposal encourages the preservation of open space in the areas with significant amounts of vegetation as called for by this policy.

Furthermore, the visual impact of the development in the context of this policy is not clear from the applicant's materials. Based on a table provided between pages 37 and 38 of the applicant's revised written statement (November 26, 2013), it appears that the majority of the buildings above 500 feet in elevation are proposed to exceed maximum allowable building height in the R-1 zone (30 feet or 37 feet for 6:12 roof pitches). Only 6 of the 23 buildings are less than 30 feet in height, with the tallest building exceeding 45 feet in height. As shown in the

applicant's revised compatibility analysis (Exhibit K of the November 26, 2013 revised application materials), this area is one of the most visible areas of the site when viewed from the west. It is not apparent from the proposed building elevations or the revised compatibility analysis that this proposal encourages clustering in the area with the least amount of visual impact as called for by this policy.

Based on the above findings, staff would conclude that the applicant has not adequately demonstrated compliance with this policy.

That adequate review of both on-site and off-site impact of any development by a qualified engineering geologist occur under any of the following conditions:

- 1. All formations:
Soil depth of 40 inches and above.
Slopes of 30 percent and above.*
- 2. Basalt flows:
Soil depth of 40 inches and above.
Slopes of 20 percent to 30 percent.*
- 3. Eugene Formation:
Soil depth of 40 inches and above.
Slopes of 20 percent to 30 percent.*
- 4. Basalt flows:
Soil depth of 20 to 40 inches.
Slopes of 30 percent and above.*
- 5. Eugene Formation:
Soil depth of 20 inches to 40 inches.
Slopes of 30 percent and above.*

Referral comments from Public Works staff include a review of the applicant's report entitled Geotechnical Engineering Report – Moon Mountain Student Housing – Eugene, Oregon, dated January 23, 2013, which was prepared by PBS Engineering + Environmental, Inc. and stamped by Ryan White, P.E, G.E. and Peter Hughes, R.G., C.E.G.. The report does not specifically address the conditions noted above, but includes review of soil surveys and borings to address subsurface conditions.

As addressed in detail below EC 9.8320(11)(d), the proposal complies with EC 9.6710 Geological and Geotechnical Analysis. The applicant's report includes identification of potential problems, and recommendations for design and construction techniques consistent with other standards applicable to the development proposal.

As supplemental information, the applicant submitted a letter from Ryan White, dated September 19, 2013 addressing slope stability, which had been omitted from the original geotechnical report because grading plans had not yet been prepared. The letter concludes that if the site grading and proposed retaining walls are constructed in accordance with the geotechnical engineering report, the slope stability will exceed the generally accepted factors

of safety for new development. The November 22, 2013 memo also concludes that the revised proposed grading plan should not result in slope stability factors of safety below the generally accepted values for new development.

Public Works staff concurs with the applicant's geotechnical assessment. Adherence to the report recommendations will be required during the subsequent privately engineered public improvement (PEPI) and building permits. Based on these findings and future permit requirements, the development complies with the intent of this policy.

That developments be reviewed to encourage clustering of open space elements of different developments in order to preserve the maximum amount of continuous open space.

The applicant proposes open space areas surrounding the entire development, including tree preservation areas along the north and east, 25-foot wide planted buffers to the south and southwest and substantial setbacks along the west. In a general sense, it appears that the applicant's design complies with the intent of this policy statement.

That developments be reviewed in terms of scale, bulk and height to ensure that development blends with rather than dominates the natural characteristics of the south hills area.

As noted above, the eastern portion of the site is above 500 feet in elevation and thus subject to this policy (See Sheet C5.0 Grading of the August 7, 2013 site plans for location of 500 foot elevation contour). As shown on the applicant's site plans, this area is proposed for 21 residential buildings (18 of which are one and two family dwellings) and associated parking, as well as the clubhouse, outdoor pool and maintenance/storage building. The applicant is also requesting approval for several exceptions to code standards including "proposed non-compliance" regarding the 30-foot building height maximum in the R-1 zone. The proposed residential buildings in this area range from 26 feet 10 inches to 45 feet 7 inches in height, with the majority of the buildings within this area exceeding the maximum allowable height of 30 feet (or 37 feet for roof pitches 6:12 or greater). For reference, elevations of the proposed buildings are provided on the applicant's site plans (Sheets A1.0 through A13.0 of the November 26, 2013 site plan set) and building heights are provided in the applicant's November 26, 2013 revised application materials (see untitled table between pages 38 and 39 of the written statement).

While the applicant has provided information showing that the one and two family dwellings are generally of a similar scale and bulk as compared to other residences in the vicinity of the subject property (see revised Compatibility Analysis submitted November 26, 2013), staff notes that the applicant has not provided similar information regarding the multi-family buildings, nor with the expansive paving proposed in association with the buildings. In this case, there are four buildings ranging from 40 feet to 115 feet in width and from 37 feet 6 inches to 45 feet 7 inches in height. Multi-family development standards at EC 9.5500(6) require that apartment

buildings within 40 feet of a front lot line be limited to 100 feet in length, which provides a good gauge of the intended bulk and scale limitations for multi-family buildings. In this case, the applicant proposes “noncompliance” with the height and width as allowed through the PUD. This would result in the buildings being taller than allowed through standard zoning in R-1, and at least one of the buildings wider than standards typically require along the street, as well as a substantial amount of paving, as compared to other typical developments in the area.

While the proposed tree preservation and landscape buffers shown on the site plans may soften the visual impact of the development and help it blend with the natural characteristics of the south hills area when viewed from adjacent properties, there is not adequate evidence for staff to arrive at such a conclusion for the portion development above 500 feet in elevation when viewed from other locations in the Laurel Hill valley. If the applicant had provided better evidence in regards to the visual impact of the buildings such as a view shed analysis or other visual representation showing the profile of the development from various vantages, that evidence may have helped to demonstrate how the project contributed to blending with the natural character. Given this lack of evidence, staff would conclude that the applicant has not adequately demonstrated compliance with this policy.

That all proposed road locations be reviewed to ensure minimum grade disturbance and minimum cut-and-fill activity, particularly in those areas most visible due to slope, topographic or other conditions.

The only road located above 500 feet in elevation is Moon Mountain Drive, which is an existing street within existing right-of-way. As discussed further under EC 9.8320(5), the applicant is proposing to improve this street to city standards within the existing right-of-way. No new roads or streets are proposed above 500 feet in elevation. Based on these findings, the proposal is consistent with this policy.

That planned unit development review shall be based upon recognition of both public and private interests. In areas of significant conflict, which could be resolved through the use of an alternative development plan, primacy shall be given to the public interest in any determinations.

This planned unit development proposal is required to meet the public policy direction contained in the South Hills Study for development in areas having significant vegetation and other sensitive characteristics such as steep slopes. The City’s evaluation of this development proposal attempts to balance the private interest to develop the property along with the public interest for minimizing the impact to the natural character of the site, in accordance with the South Hills Study and other applicable planned unit development approval criteria.

In the context of the South Hills Study and the subject proposal, the public interest stems from the balance of blending the development with the natural characteristics of the south hills area and the provision of increased urban densities within the urban growth boundary of the City, in a manner that balances private and public interests. Staff acknowledges that an appropriate

level of residential development is intended to occur in the south hills, and that multi-family development is not an inherently incompatible use.

In this case, staff's evaluation leads to the City's initial conclusion that the application does not achieve the required balance between all of the applicable policy objectives, based on failure to provide enough evidence to demonstrate compliance with several key approval criteria related to bulk, scale and height and compatibility.

That all developments shall be reviewed for potential linkage with or to the ridgeline park system.

The nearest park included in the City's ridgeline park system is Moon Mountain Park, which is located approximately 0.8 miles from the subject property via the existing street system. Given the location of the subject property, staff confirms there are no other opportunities to provide linkages with or to the ridgeline park system.

That all developments (planned unit developments or subdivisions) be reviewed to ensure maximum preservation of existing vegetation.

Staff incorporates the findings and evidence referenced below at EC 9.8320(4), regarding tree preservation, as a basis to conclude that the applicant has ensured maximum preservation of existing vegetation as required by this policy.

Opponents' Arguments

The opponents arguments focused on several SHS policies including EC 9.9630(3)(b) and EC 9.9630(3)(e, f, g and i). HE-13. Opponents refer to the SHS policies by both code number and policy number which is somewhat confusing. For the purposes of EC 9.8320(2) the SHS policies apply directly. For clarity EC 9.9630(3)(b) corresponds to SHS Policy DII.2. EC 9.9630(3)(e) corresponds to SHS Policy DII.6. EC 9.9630(3)(f) corresponds to SHS Policy DII.7. EC 9.9630(3)(g) corresponds to SHS Policy DII.8. EC 9.9630(3)(i) corresponds to SHS Policy DII.10.

As to Policy DII.2, they argue that the way the applicant has "clustered" the middle section of the development visually affects 75 percent of the total elevation of the site, and that building heights will be at elevations where they will easily be seen near the crest of the ridge at the intersection of Laurel Hill Drive and Moon Mt. Drive. They also argue that trees and open space at the highest elevation near that intersection will not be retained in exchange for a meager 22 additional bedrooms.

On Policy DII.6, the opponents argue that the height and length of the proposed buildings in the middle of the site represent a bulk and scale that is not harmonious and will not blend with the surrounding area. They argue that a significant percentage of the buildings (between 43 and 75 percent depending on whose calculations are chosen) will exceed the 30 foot building height in the R-1 zone. This results in several of the proposed buildings exceeding the height of some of the

trees located near the ridge line. In connection with this argument, the opponents submitted a photo montage that approximates the look of the development once completed. The opponents submitted an oversize version of this perspective at the hearing as well.

On Policy DII.7, they argue that the three drive aisles proposed for the middle of the site are long (up to ½ mile in length) wide (approximately 60 feet) and due to the slope in that part of the site (alleged to be 14-15%) will require an enormous amount of cut, fill and grading – which is opposite of the “minimum grade disturbance” required by this policy.

On Policy DII.8, they argue that the public interest is not given primacy in the proposal because the development will be highly and obtrusively visible, is out of scale with the surrounding neighborhood, and numerous trees, some of them very old and tall, will be lost in order to reach the 606 units that the applicant desires build. For the same reasons, the opponents argue that Policy DII.10 is violated in particular because the proposal sacrifices a high percentage of the oldest and tallest trees on the property in order to gain 22 units at the top of the ridge line.

Applicant's Response

During the application process the applicant provided at least two large packets of information providing photographs, architectural renditions, and argument regarding the bulk, scale, visual impact and overall compatibility of the proposal with the existing development in the Laurel Hill area.¹ The applicant also provided an explanation of the efforts to modify the site plan from the original version to the November 26, 2013 version to reduce building heights and the bulk of the proposed buildings – particularly in the middle section of the site.

The applicant makes several related arguments disagreeing with staff's conclusions on the issue of bulk, scale and visual impacts and overall visual compatibility of the proposal with the Laurel Hill area. The arguments are extensive and detailed. The arguments can be summarized as follows:

- The SHS visual impact standards, are largely subjective standards and must be balanced with the flexibility provided in the PUD process. HE-11, PT-11, Reeder January 24, 2014 letter.
- The City's Goal-5 decision on visual resources already determined that the any resource on the subject property would receive limited protection which is why the R-1 zoning is appropriate. HE-11.
- The screening that will be provided on-site will mitigate if not eliminate most of the visual impacts as seen from surrounding lands. Screening need not completely obscure the

¹ See applicant's October 16, 2013 compatibility submission, November 26, 2013 revised compatibility analysis, December 11, 2013 supplemental compatibility information (presented at the hearing) and Attachments to PT-11 which verify the accuracy of the visual renderings submitted to support the applicant's position on visual impacts. PT-11, Exs. 15.1-16.

proposed buildings. PT-11. Abundant on-site vegetative buffers of significant height will target visual impacts from immediately surrounding land owners. Reeder, January 17, 2014 letter.

- Only a handful of views of the proposed PUD will be impacted because two sides of the property abut areas that contain existing residences – to the west and southeast. Reeder, January 17, 2014 letter. Only a few existing residences will have views of the PUD that will be negatively impacted.
- The applicant’s renderings of the PUD as shown at the December 18, 2013, hearing show limited visual impacts and are accurate renditions of those visual perspectives. In contrast, the photo montage presented by opponents is not precisely accurate.

In an overarching argument, the applicant states that the subjective nature of the criteria that touch upon visual impacts, bulk and scale must be reasonably weighed against the density allowances of the R-1 zone, the infill policies protecting the UGB in the Metro Plan, and the flexibility given to PUD applicants to create site designs that balance clustered development with desired open space and retention of on-site resources.

Hearings Official Conclusions – South Hills Study

As an initial matter, the Hearings Official deems it prudent to identify the policies in the SHS that contain mandatory approval criteria. Again, the *McGowan* case discussed above specifically identified policies of the SHS that contain mandatory language. Those policies are DII.6, 7, 8 and 10. Policies DII.2 and 4, both identified by the opponents, contain the non-mandatory term “encourage” and failure to absolutely comply with those policies cannot be a reason for denial of the application.

As to Policy DII.6, the Hearings Official agrees that it is a subjective standard. Subjective standards are messy, difficult to understand, and inherently unsatisfying to apply because one is never quite sure that the ultimate decision is correct. However, the Hearings Official assumes that the City Council has heard these complaints before and has apparently decided over time not to amend the SHS policies or the PUD provisions at EC 9.8320(2, 12 and 13) to impose more objective standards. Therefore, all participants in the PUD process must wrestle with the subjective nature of those provisions. What the Hearings Official cannot assume is that because the SHS policies and related code provisions are subjective that they are also essentially so flexible as to be meaningless. I also cannot find language in EC 9.8300-8320 that would allow the principle of “a high degree of flexibility” to trump specific criteria such as those noted above simply because the applicable residential zone allows a higher residential housing density.

The role of the Hearings Official in applying these subjective standards is also not entirely clear. EC 9.7330 states that for a Type III procedure such as this one, “[t]he decision shall be based upon and be accompanied by findings that explain the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the

decision based upon the criteria, standards and facts set forth.” Based on these parameters, it seems clear that the Hearings Official is not entitled to replace the subjective determinations of the applicant, staff and participants with his own subjective view, but rather weigh the evidence and argument submitted in an attempt to determine and explain how a criterion is, or is not met. All that being said, the nature of a Hearings Official’s assessing visual impacts, including scale and bulk, cannot help but have a subjective element.

So, with respect to Policy DII.6, the Hearings Official finds that the most compelling evidence on visual impacts is both the applicant’s renderings of the PUD from a location on Verndenhill Drive, and the opponents’ photo montage of the same perspective. Although the applicant’s architect submitted criticisms of the opponents’ photomontage, the critique represents minor disagreements about the perceived height of some buildings and their correct aspect. However, the Hearings Official does not agree that this evidence so undermines the opponents’ rendering as to make it unreliable. To the contrary, the applicant’s architectural perspectives as shown at the hearing and included in the applicant’s compatibility analysis, and the opponents’ photo montage are more similar than different. They both show that the finished PUD will be clearly visible and will likely present a nearly unbroken continuum of apartment buildings that extend far up the slope of the subject property. And, while some intervening trees may obscure part of the PUD during the spring and summer seasons, the Hearings Official is persuaded that for perhaps up to ½ the year even more of the PUD will be visible through the deciduous trees.

In this I agree with the staff findings above and the conclusions set forth in staff’s January 10, 2014 memorandum, and adopt those findings by this reference. Those findings represent not only conclusions about the evidence submitted, but also professional opinion based on her training as a planner. LUBA has often repeated that staff conclusions set forth in a staff report constitutes substantial evidence itself. *Doty v. Skrepetos*, ___ Or LUBA ___ (LUBA No. 2002-024, September 17, 2002). Although the applicant attempts to step through a variety of locations in the “surrounding area” that will have limited or partially screened views of the PUD, that analysis is based on the assumption that only a few of the buildings can be seen Verdehill Drive location. See Reeder, January 17, 2014 letter.² However, even that one vantage point is sufficient to conclude that for the purposes of Policy DII.6, the proposal’s scale, bulk and height will “dominate” rather than “blend” with the natural characteristics of the south hills area. This policy of the SHS is not met.

As to Policy DII.7, the applicant argues both that the three drive aisles are not “roads” and that the cut and fill associated with those roads is not of a significant quantity. The Hearings Official concludes that the “drive aisles” in all ways function as roads both within and through the subject property. As such, they will have the same impact on the landscape as “roads.” The language of Policy DII.7, and the generality of the SHS policies, strongly suggests that the “drive aisles” be treated as roads for the purpose of considering Policy DII.7.

² Mr. Reeder’s analysis is focused on EC 9.8320(3) and what constitutes the “surrounding area.” He argues that properties that are adjacent or in close proximity to the subject property will largely be screened or do not have a view of the subject property anyway. While that may be the true, EC9.9630(3)(e) contemplates impacts through a much broader geographical area – the “south hills area.”

The opponents submitted calculations that, based on the applicants' grading plan, argue that a little over 76 percent of the subject property will be cut or filled to accommodate those roads. The applicant's engineer disagreed with that calculation stating that the cut and fill will disturb only 70 percent of the site. PT-11, Ex. 12. Again, the applicant and opponents agree more than disagree. These two pieces of evidence show that construction of the drive aisles will cause a majority of the subject property will be cut and or filled in to accommodate vehicles. The text of this SHS policy shows an emphasis on minimizing "grade disturbance" whether that disturbance is visible from outside the PUD or not. Even understanding the trade-offs inherent in providing off-street parking, it is difficult to conclude that the proposed site design and grading plan constitute "minimum cut-and-fill activity" as required by Policy DII.7. This SHS policy is not met.

For the same reasons that the proposal does not meet Policy DII.7, the application does not comply with Policy DII.8. Although the applicant states that the public interest is served because no tax credits or incentives are sought, and because the project provides "needed housing" those considerations are not relevant to Policy DII.8. The provision is focused on resolving conflicts between proposals for locating PUDs in "highly visible" areas or in areas of significant vegetation. If the project will be highly visible, which this proposal will be, consistent with the findings above, an alternative development plan should be sought in order to give "primacy to the public interest." As explained above in the findings for EC 9.8320(1) the applicant has opted into the subjective and discretionary PUD criteria rather than pursuing the more objective "needed housing" PUD criteria at EC 9.8325. Similarly, the applicant has not pursued development of the subject property through an as-of-right development in the R-1 zone. In addition, the applicant has decided on a self-imposed minimum number of dwelling units of 606 in order to satisfy the applicant's desired rate of return on investment over time. That is the applicant's prerogative. However, the Hearings Official has declined to engage in a theoretical comparison of worst case scenarios under either the "need housing" option or full residential density verses the current PUD design because the exercise would be just that – theoretical, and unsubstantiated by any evidence in the record. The text of Policy DII.8 strongly suggests that highly visible PUDs are not in the public interest in the SHS area. This SHS policy is not met.

SHS Policy DII.10 contains mandatory language requiring the "maximum preservation of existing vegetation." As noted above in the findings for Policy DII.7, both the applicant and opponents evidence shows that between 70-76 percent of the entire site will be graded which means the existing vegetation will be removed. Even by subjective standards, that is a large and significant amount of vegetation removal. Granted, some of the vegetation slated to be removed is composed of trees in poor condition and invasive plants. However, the opponents also object to the total number of trees proposed to be removed (between 220 and 242 depending upon whose calculation is selected) – about 1/3 of the trees on the property. See January 17, 2014 letter from Gunnar Schlieder on tree preservation and HE-13. The opponents also specifically object to the removal of healthy trees near the intersection of Laurel Hill Drive and Moon Mt. Drive to accommodate the five dwellings and 22 bedrooms proposed for that area. These trees, according to the opponents, are some of the oldest and largest trees on the property. The applicant does not appear to dispute that many of the largest trees will be lost. On balance, because such a large percentage of the site will be graded and because the units proposed at the top of the ridge will

remove a significant number of trees, the Hearings Official agrees with the opponents that this SHS policy is not met.

As a final matter, the Hearings Official disagrees with the applicant's argument that the SHS represents a Goal 5 decision to limit protection for a scenic resource – resulting in the imposition of R-1 zoning. The Hearings Official agrees with staff's January 10, 2014 memorandum and interpretation of the attached Ordinance 20351. The Hearings Official is persuaded that the SHS area and in particular the majority of the subject property is not part of the City's Goal 5 inventory. The Hearings Official adopts the findings of staff's January 10, 2014 memo as his own by this reference.

EC 9.8320(3): The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.

Staff Findings

The applicant's proposal includes 162 dwelling units consisting of one and two family dwellings and multi-family dwellings in 49 buildings. Also proposed are a clubhouse, maintenance building and outdoor pool. As noted in the application materials, the proposal also includes 525 on-site vehicle parking space, 252 bicycle parking spaces, two bicycle/pedestrian paths providing connections to transit stops on August Street, and over ten acres of open space/tree preservation/landscaped areas.

The applicant is requesting approval for several exceptions to code standards including "proposed non-compliance" regarding the 30-foot building height maximum for 42 of the 51 buildings in the R-1 zone, to allow the buildings to exceed height by 8 inches (building 124) to 15 feet 7 inches (building 138). For reference, elevations of the proposed buildings types are provided on the applicant's November 26, 2013 revised site plans (Sheets A.1 through A.13) and building height calculations are provided in an untitled table in the November 26, 2013 revised written statement, between pages 38 and 39. Staff notes that the calculated building heights provided by the applicant (in the table) are not consistent with the heights as shown or measured on the proposed building elevations. Staff is unable to confirm the accuracy of these heights without accurate elevations of each building and associated grade. For the purposes of this evaluation, the heights in the table were used.

The applicant is also proposing non-compliance with several standards related to the proposed parking areas, including the requirement that parking drives to be designed to permit no through motor vehicle movements, that individual parking courts not exceed 9,000 square feet and that no more than three parking courts be connected. As shown on the applicant's November 26, 2013 revised site plans (Sheet C3.1), with the exception of the two parking areas immediately off Moon Mountain Drive (for buildings 146 through 150) and the parking area for the club house, all of the parking areas provide for through vehicle movements, and exceed the limit that no more than three parking courts be connected. Additionally, according to a map

provided as part of the applicant's November 26, 2013 revised written statement (Parking Court Area Exhibit), six of the parking courts exceed the 9,000 square foot limit.

Staff notes that the proposed building heights, coupled with the mass of the multi-family buildings and the expansive parking areas are not development characteristics typically seen in R-1 neighborhoods, and require extra attention as it relates to screening. To that end, the applicant's written statement indicates that the proposed tree preservation, along with the restoration plantings, the proposed 25 foot wide landscaped buffers and the building locations provide adequate screening. However, based on the evaluation below and available evidence, staff cannot conclude that the proposal provides adequate screening in all cases.

To the north and northeast of the site are Laurel Hill Drive and Interstate 5, which provide adequate screening from any properties beyond the Interstate 5 right-of-way. To the southeast, across Laurel Hill Drive (north of Moon Mountain Drive) is a vacant parcel zoned R-1 Low Density Residential that contains an electrical tower immediately across from the location of proposed buildings 149 and 150. Across Laurel Hill Drive, south of the intersection with Moon Mountain Drive are single family residences on R-1 zoned land (immediately across from the location of buildings 146, 147 and 148). The proposed buildings in this location are of a similar size and scale as other single family homes in the vicinity (albeit with significantly larger parking areas). To the extent these buildings need to be screened from nearby single family homes, they will be adequately screened by existing trees to be preserved and the proposed landscaped buffer.

To the south of the subject property are single family homes. The applicant is proposing a 25 foot wide landscaped buffer along the majority of the southern property line (with the exception of an area to the east and southeast of the club house that is proposed for tree preservation). This buffer is proposed to consist of coniferous trees, including Douglas Fir, Ponderosa Pine and Red Cedar, as well as under story trees, shrubs and ground cover. A 60 foot wide unimproved right-of-way borders the property along the most southern portion of the southern property line. The proposed buildings (south of Moon Mountain) that are closest to the southern property line are setback approximately 35 feet (building 146 and the clubhouse) and 70 feet (building 141) from the southern property line. The proposed buildings are primarily one and two-family dwellings (although most are proposed to exceed allowable heights), as well as the clubhouse, pool and maintenance building. Given the proposed landscaped buffer, tree preservation areas, setbacks and the width of the unimproved right-of-way, the buildings in this area are provided adequately screened from the properties to the immediate south. However, given the proposed building heights (the majority of which exceed allowable heights) and the lack of information regarding visibility of this area, staff cannot conclude it is adequately screened from the west of the site.

To the south west of the subject property is the Northwest Youth Corps campus, on the former Laurel Hill Elementary School site. To the west are single family and multi-family residences. The applicant has proposed continuing the 25 foot wide landscaped buffer for approximately 410 feet along the western property boundary starting at the southwestern corner, as well as

installing a fence along the entire western property line with the exception of within the /WR conservation area. Proposed buildings in this area include one family dwellings and a four-unit building (buildings 114 through 121), setback from the western property line by a minimum of 20 feet. Based on the applicant's Compatibility Analysis, submitted as part of the November 26, 2013 revised application materials, the one-family dwellings are of a similar scale to those in the surrounding area, and the four-unit buildings are smaller in scale than the Northwest Youth Corps building to the southwest. Staff notes that the grading plans show that this area will be filled with up to at least 10 feet of material. The proposed landscaped buffer, fencing, building sizes and locations may help to provide adequate screening from surroundings properties. However, given the proposed building heights (the majority of which exceed allowable heights), the proposed height of the fill, and the lack of information regarding visibility of this area, staff cannot conclude it is adequately screened.

To the west of buildings 109 through 113 is primarily a 40 unit multi-family development. The proposed buildings are setback approximately 25 feet from the western property line; however, only one of the seven buildings here is proposed to meet allowable building heights. No vegetated buffer is proposed here, although a ten-foot tall retaining wall is shown west of buildings 113, 114 and 115, and fencing is proposed. As shown on the grading plan, this area is proposed for fill as well. Although the proposed buildings are, for the most part, adequately setback from the development to the immediate west, given the proposed building heights, the proposed height of the fill, and the lack of information regarding visibility of this area, staff cannot conclude it is adequately screened.

At the northwest corner of the site is a Goal 5 riparian area that must be protected. As such, the buildings to the east are setback a minimum of 150 feet from the western property line. Once again, however, this is an area where the proposed building heights generally exceed the allowed maximum, and the multi-unit buildings range from 75 feet to nearly 115 feet in length. Coupled with the proposed fill, and the lack of information regarding visibility of this area, staff cannot conclude it is adequately screened.

In addition to the above concerns about the edges of the site, staff has serious concerns about adequate screening as it relates to the center of the site. As shown on the applicant's site plans, this area includes a row of six of the largest buildings (buildings 122 through 127), all of which are proposed to exceed building height (by between 10 inches and 3 and a half feet). Three of the buildings are approximately 80 feet in length and the other three are approximately 122 feet in length. The buildings are approximately 20 feet apart and appear to be separated by retaining walls. West of these buildings are two driveways with levels of vehicle parking on both sides (each 60 feet in width). While these buildings are clearly well setback from adjacent properties, the concern here is visual impact from the rest of Laurel Hill Valley, especially given the proposed building heights, lengths and mass, proposed cuts and fills, and expanses of paving. As noted above, the applicant has provided a compatibility analysis (submitted November 26, 2013 as Exhibit K to the revised application materials) which helps provide some reference regarding the location of the site in relation to the rest of the

Laurel Hill Valley, however, the applicant still lacks key information regarding the visual impact of the proposed building heights and mass, cuts and fills or paving.

As the above discussion indicates, staff's concern is focused on two key issues:

1. The applicant has not provided the necessary visual analysis to fully evaluate the adequacy of screening from surrounding properties, nor has the applicant provided adequate visual analysis to fully evaluate how the proposed project is reasonably compatible and harmonious with surrounding properties.
2. Based on the available information provided by the applicant, staff also finds that the intensity of the proposed development, including larger building masses, additional height and the expansive parking areas cannot be adequately screened from surrounding properties. Similarly, staff finds that that the project, as designed, is not compatible with surrounding development (as further discussed at EC 9.8320(13)). Specifically, staff finds that the scale, mass and overall number of large multi-family buildings, coupled with expansive parking areas result in a level and intensity of development that is not compatible with its surroundings.

Based on these findings and the available evidence, staff cannot conclude that this criterion is met.

Opponents' Arguments

The opponents' arguments echo many of the concerns raised by staff, particularly with regard to understanding actual building heights and vantage points. Opponents argue that the applicant's revised information indicates that a minimum of 43 percent of the buildings will exceed the 30 foot limitation imposed by the R-1 zone. HE-13. They also argue that the middle section of the PUD occupies an elevation range of 90 feet between the lowest building (468 ft. and the highest (559 feet). The opponents allege this area is visible from the residential areas to the west and south of the subject property. Opponents also objected to the height of the proposed units at the intersection of Laurel Hill Drive and Moon Mt. Drive and stated those dwellings cannot be screened in any way from the valley below. The oral testimony at the hearing also indicated that some adjacent neighbors near or at the ridgeline will have a view down into the proposed PUD.

Attorney Peter Livingston testified at the hearing both to the adjacency of his client's Oak Creek Townhomes and the lack of sufficient screening to obscure the proposal from his client's property. In a January 10, 2014 letter, he reiterates those points and notes that even though the applicant has made offers of fencing and a vegetated buffer, those mitigations will not be sufficient to screen the applicant's buildings and will adversely impact his client's tenants. PT-10.

Applicant's Response

The applicant's response relies heavily on the supplemental compatibility analysis discussed

above and the renderings of the three perspectives of the proposed PUD. The views from those locations, according to the applicant, either will not need screening or will be sufficiently screened by vegetated buffers. The applicant also asserts that EC 9.8320(3) is limited to screening “surrounding” properties. Offering the Webster’s Third New International Dictionary definition of “surround” the applicant argues that only the immediately adjacent properties need to be screened to comply with EC 9.8320(3). Further, in Mr. Reeder’s January 17, 2014 letter, he summarizes the applicant’s offers to provide vegetative buffers in various locations to address specific locations – such as the Oak Creek Townhomes.

Hearings Official Conclusions

The applicant correctly notes that LUBA’s decision in *Northgreen Property LLC* affirmed the former Hearings Official’s interpretation of the terms “adequate” and “screening” as used in EC 9.8320(3). That interpretation concluded, at least with respect to the physical limitations associated with cell towers, that EC 9.8320(3) does not require a development to be completely obscured from view, but that it be screened “to a reasonable extent” considering the proposed use. The Hearings Official adhered to that holding in the recent decision in PDT 13-1 (Oakleigh). That proposal was for a PUD at the end of a local street on flat ground where only the adjacent properties were reasonably likely to be affected. In contrast, the subject property not only borders relatively long sections adjacent to the existing residences to the west and south, but also based on the topography of the valley, can be seen from residences that are more distant from the subject property.

While the applicant is correct to focus on the definition of the term “surrounding” in EC 9.8320(3), the dictionary definition cannot be read to be synonymous with the term “adjacent.” If only “adjacent” properties were to be protected, then that term would have been used in EC 9.8320(3). In interpretation substituting the term “adjacent” for the word “surrounding” would violate ORS 174.010. The record shows that some of the properties to the west of Augusta Avenue could be impacted by the height, bulk and scale of the proposed development. Those properties are close enough to constitute “surrounding” properties as opposed to “adjacent” properties. However, I agree with the applicant that for the purposes of EC 9.8320(3), “surrounding” properties cannot include all properties in the Laurel Hill area that have some sort of view of the subject property.

After considering all of the evidence submitted, the renderings as discussed in the findings for SHS Policy DII.6, and the letters from both the applicant’s architect and LHVC discussing disagreements of the accuracy of those renderings, the Hearings Official agrees with staff’s conclusion that insufficient information exists in the record to determine whether the screening proposed by the applicant will be effective to mitigate the potential visual impact of the height, bulk and scale of the PUD as proposed.

The primary difficulty with the applicant’s compatibility information is that only three locations were portrayed to provide the information on how visible the PUD might be from “surrounding properties.” Two of those perspectives are at the entrances to the development at each

terminus of Moon Mt. Drive. Perhaps predictably, they simply show a glimpse of the PUD at grade. The Hearings Official does not find these perspectives representative of the view from surrounding properties, but only representative of what they are – views from the entrances to the PUD. The third perspective is from Verdehill Drive is discussed above, and is in the Hearings Official’s opinion too distant to expect that on-site screening could mitigate the visual impact. While staff found the three perspectives to be accurate, they are not fully representative of views from even a portion of the surrounding properties which might be impacted. From this record it is not possible for the Hearings Official to understand whether intervening existing vegetation, existing on-site vegetation, or the on-site vegetated buffers proposed by the applicant will be effective in screening the height, bulk and scale of the proposal from properties that are closer to the subject property but not “adjacent” such as those noted along Augusta Street. EC 9.8320(3) is not met.

EC 9.8320(4): The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

(a) Protection of Natural Features.

- 1. For areas not included on the City’s acknowledged Goal 5 inventory, the preservation of significant natural features to the greatest degree attainable or feasible, including:**
 - a. Significant on-site vegetation, including rare plants (those that are proposed for listing or are listed under State or Federal law), and native plant communities.**
 - b. All documented habitat for all rare animal species (those that are proposed for listing or are listed under State or Federal law).**
 - c. Prominent topographic features, such as ridgelines and rock outcrops.**
 - d. Wetlands, intermittent and perennial stream corridors, and riparian areas.**
 - e. Natural resource areas designated in the Metro Plan diagram as “Natural Resource” and areas identified in any city-adopted natural resource inventory.**

Staff Findings

As shown on Sheet C3.0 of the applicant’s November 26, 2013 site plans, the northwestern corner of the subject property contains a protected Goal 5 riparian area and associated wetland. The Augusta Creek/Laurel Valley Creek is identified as a Goal 5 “Category D” stream and requires a conservation setback of 20 feet. This Goal 5 portion of the development site is addressed below at subsection (a)2, while the remaining portion of the site (outside of the Goal 5 resource and conservation setback) is addressed at subsection (a)1 below.

With the exception of the protected Goal 5 riparian area located in the northwestern portion corner of the site, the majority of the site is not included on the City’s acknowledged Goal 5 inventory. Regarding subsection (a)1.a. regarding on-site vegetation and rare plants, the

applicant's materials (including the wetland delineation report, rare plant species memo, endangered species act memo, and tree survey/report submitted August 7, 2013 and the related supplemental memos/addendums submitted November 26, 2013) indicate that on the portion of the site not included in the Goal 5 inventory there is no significant on-site vegetation, nor rare plants or native plant communities, and is dominated by non-native species. Regarding subsection (a)1.b., the applicant submitted a study prepared by Pacific Habitat Services that confirms there are no known documented habitats for rare animal species on the subject property. Regarding subsection (a)1.c., there is no evidence of ridgelines, rock outcrops or other topographic features on the site. Regarding subsection (a)1.e., there are no areas on the subject site that are designated on the Metro Plan diagram as "Natural Resource."

Regarding subsection (a)1.d., the applicant submitted a wetlands delineation that indicates that there are approximately 1.53 acres of wetlands, including wetlands outside the protected Goal 5 area. The applicant submitted supplemental information on October 17, 2013, including an October 16, 2013 technical memorandum prepared by Pacific Habitat Services assessing the quality of the wetlands outside of the Goal 5 area and their influence on the Goal 5 protected area. As noted in that memo, the wetlands not identified or protected as Goal 5 are considered low quality wetlands, and/or do not affect the hydrology of the Goal 5 area. This information was confirmed for the current site plan in a memo from Pacific Habitat Services provided in the applicant's November 26, 2013 revised application materials. As these wetlands are not considered significant in the context of this criterion, their preservation is not warranted under this criterion. Based on these findings and the available evidence, staff concludes this criterion is met.

Opponents' Arguments

The opponents argued at the public hearing and in written submissions that several species exist on the subject property that can be considered rare, species of concern, sensitive or vulnerable under state law. They also argue that some species alleged to be present are also listed as threatened under the federal Endangered Species Act. HE-13. See also, January 9, 2014 and January 17, 2014 letters from Mark Conley.

Applicant's Response

The applicant submitted a response from Craig Tumer of Pacific Habitat Services. PT-11 Ex. 14. In that letter Mr. Tumer explains the analysis undertaken to identify any state or federally listed species that EC 9.8320(4)(a) is intended to protect. He concludes that there are no resident species that fall into those categories.

Hearings Official Conclusions

The Hearings Official agree with staff's findings and adopts them by this reference. With regard to plant and animal species, the information submitted by the opponents primarily consists of an explanation that two members of LHVC are professional fisheries and wildlife

biologists, and a list of species alleged to be present on the site. Their position on the presence of species and their methodology for determining that presence is not explained. In contrast, the applicant provided a thorough inventory of species in the applicant submittal and also provided a specific rebuttal to LHVC's arguments in Mr. Tumer's January 8, 2014 memorandum. The Hearings Official finds that the applicant's evidence is more reliable, and more specifically explains how information was gathered on the actual presence of species covered by EC 9.8320(4)(a). This is sufficient to show compliance. This criterion is met.

2. **For areas included on the City's acknowledged Goal 5 inventory:**
 - a. **The proposed development's general design and character, including but not limited to anticipated building locations, bulk and height, location and distribution of recreation space, parking, roads, access and other uses, will:**
 - (1) **Avoid unnecessary disruption or removal of attractive natural features and vegetation, and**
 - (2) **Avoid conversion of natural resource areas designated in the Metropolitan Area General Plan to urban uses when alternative locations on the property are suitable for development as otherwise permitted.**
 - b. **Proposed buildings, roads, and other uses are designed and sited to assure preservation of significant on-site vegetation, topographic features, and other unique and worthwhile natural features, and to prevent soil erosion or flood hazard.**

Staff Findings

The portion of the site included on the City's acknowledged Goal 5 inventory is an approximately 58,645 square foot area located in the northwest corner of the subject property. This area includes a Goal 5 riparian area protected by the /WR Water Resource overlay, including a 20 foot setback.

Consistent with a.(1) and b., the proposal does not include any development within the area included on the City's acknowledged Goal 5 inventory, with the exception of a sanitary sewer line, a bicycle/pedestrian path within the footprint of the sanitary sewer easement, and discharge of storm water. Such uses are allowed subject to approval of the applicant's concurrent standards review, which is evaluated below following the conclusion of the tentative planned unit development evaluation. Regarding subsection a.(2), the site does not include any area designated natural resource in the Metro Plan. Based on these findings and the available evidence, staff concludes this criterion is met.

Opponents Arguments

The opponents argue that directing stormwater into the identified Goal 5 wetland converts that wetland to municipal uses in violation of EC 9.8320(a)(2). They assert that the inflows will be untreated and are not subject to detention or retention. The opponents also argue the cut and fills

on the site will allow stormwater to pierce the surface soil layer and travel down slope as groundwater into the Goal 5 wetland which it will not be able to accommodate and this condition will lead to flooding of surrounding properties. See also, letter from January 17, 2014 letter from Tom Halferty.

Applicant's Response

The applicant provided two memoranda from consulting and environmental engineers. The first is a January 10, 2014 memorandum from Pete Miller. PT-11 Ex. 13.1. The second is a January 9, 2014 letter from Ryan White. PT-11 Ex. 13.3.

Hearings Official Conclusions

The Hearings Official agrees with the staff findings and adopts them by reference. The Hearings Official is also convinced that the subject wetland will not be converted to municipal uses. The two memoranda submitted by the applicant provide reliable evidence that demonstrates at least four relevant facts: 1) all the stormwater that is directed at the wetland will be properly treated, 2) the site design will have the effect of reducing combined flows to approximately half of predevelopment flows, 3) a DEQ 1200c permit will be required which will adequately regulate the stormwater on the site, and 4) once the retaining walls proposed for the site are constructed their design will act to slow the flow of ground water rather than increase it. The Hearings Official finds that the applicant's engineers have adequately responded to the opponents' objections. The application materials and the identified memoranda are sufficient to demonstrate that the Goal 5 wetland will not be converted to municipal use. These criteria are met.

- (b) **Tree Preservation.** The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:
1. **Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;**
 2. **Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;**
 3. **Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;**
 4. **Trees that provide a buffer between potentially incompatible land uses;**
 5. **Trees located along the perimeter of the lot(s) and within building setback areas;**
 6. **Trees and stands of trees located along ridgelines and within view corridors;**
 7. **Trees with significant habitat value;**
 8. **Trees adjacent to public parks, open space and streets;**
 9. **Trees located along a water feature;**

10. Heritage trees.

Staff Findings

The applicant submitted an arborist's report, dated July 24, 2013 and January 3, 2013, prepared by Kyle King (See Exhibit G of the applicant's August 7, 2013 written statement) identifying the species, size and condition of all significant trees (those with minimum cumulative diameter breast height of 8 inches per Eugene Code 9.0500) on the subject property. The applicant states that there are approximately 614 significant trees on the subject property, of which 98 are identified to be in good condition (see page 17 of the applicant's August 7, 2013 written statement) (although it appears that several are within the adjacent rights-of-ways). The majority of the significant trees are located on the eastern side of the property, and in the vicinity of the Goal 5 protected area in the northwest corner of the site. The applicant's tree protection plan is shown on Sheet TP-1 (see November 26, 2013 revised site plan set). Also provided as Exhibit G in the applicant's November 26, 2013 revised materials is a letter from Kyle King (dated November 23, 2013) confirming he reviewed the revised site plan and has no changes to his conclusions or recommendations.

According to the arborist's report, the healthiest trees on the subject property are located along the highest portion of the property at the eastern side of the site (generally north of Moon Mountain Drive). As shown on the tree preservation plan, several stands of trees are proposed to be preserved in this area. Other tree preservation areas are proposed south of Moon Mountain Drive, both west of buildings 146 through 148 and south of the club house, as well as the trees within the Goal 5 protected area. Preservation of these trees complies with the above criterion because they are generally healthy, are in stands of trees rather than isolated individuals, and provide buffering and screening functions. Additionally, the trees within the Goal 5 protected area are located near a water feature. Furthermore, as addressed below, the applicant is proposing restoration and replacement to offset some of the tree removal.

The applicant's tree protection plan delineates the critical root zone of the trees proposed for preservation, and tree protection fencing is proposed around the critical root zone of preservation trees. To ensure that the trees are adequately protected during construction and the life of the development, the following condition of approval is appropriate:

The applicant shall revise the Tree Protection Plan to include adequate protection measures for trees indicated to be preserved, as follows:

- Include a note on the plan that "All building permits for construction shall include a site plan in compliance with the approved tree protection plan. The building permit submittal shall include sufficient detail to verify that no more than 30 percent of the critical root zones of trees to be preserved will be impacted by construction activities, or a report from a certified arborist verifying that the proposed construction activities can otherwise be conducted in a manner that does not threaten the survival of the trees to be preserved. Each building permit shall include tree protection fencing to be erected as shown on the Tree Protection Plan (or an

alternative location as approved and documented by the certified arborist and City).”

- Include a note on the plan that “Protective fencing for trees identified to be preserved shall be installed under the direction of a certified arborist and inspected and approved by the City prior to beginning any construction related activities. All protective tree fencing shall remain in place until completion of all construction activities. Relocation and removal shall also occur under the direction of a certified arborist, with approval by the City.”
- Include a note on the plan that “No excavation, grading, filling, material storage, staging, vehicle parking or other construction activity shall take place within the identified tree protection areas without approval by the City.”
- Include a note on the plan that “Removal of dead, diseased, or hazardous trees shall be allowed with documentation from a certified arborist as to the condition of the tree and the need for removal. Documentation must be provided to the City for review and approval prior to tree removal activity.”
- Include a note on the plan that “The removal of trees indicated ‘to be removed’ is not required; said removal may occur at the applicant or future owners’ discretion.”
- Include a note on the plan that “In the event a preservation tree must be removed, it shall be replaced at a ratio of two (2) trees for each one (1) tree removed. Replacement trees shall be native species, with a minimum caliper of 2" for deciduous trees and a minimum height of 5' for coniferous or evergreen trees. Planting, watering and general maintenance of replacement trees shall be conducted by the lot owner in manner that ensures their establishment and long-term survival.”
- The plan shall be revised to show and account for the location of all public and private utility easements.

Based on the above findings, available evidence and recommended condition, this criterion is met.

Opponents Arguments

The opponents provide extensive analysis of the number, condition and size of trees proposed to be removed from the site. That analysis argues that a large percentage of the oldest and largest trees are to be removed. HE-13. The opponents also argue that between 220 and 242 trees will be removed, and the trees removed are significantly skewed to the oldest, largest and best condition trees – primarily because many trees proposed for removal are to make room for the 22 bedrooms proposed near the intersection of Laurel Hill Drive and Moon Mt. Drive at the top of the ridge. See January 17, 2014 letter from Gunnar Schlieder.

Applicant's Response

The applicant argues that tree protection under EC 9.8320(4)(b) is a balance with development needs and that past Hearings Officials' decision have allowed extensive tree removal in order to allow past PUDs. In addition to the arborist report identified by staff, the applicant notes an August 7, 2013 report in the application materials, and a January 10, 2014 letter from the applicant's arborist Kyle King. These reports, the applicant argues, show compliance with EC 9.8320(4)(b).

Hearings Official Conclusions

In general the Hearings Official agrees with the applicant and staff. The applicant's tree survey diagram in the application material shows very few existing trees in good condition in the middle of the property where most the proposed disturbance and development would occur. This information is also reflected in the applicant's most recent Tree Protection Plan which identifies relatively few trees slated for removal from that area.

Where the Hearings Official parts ways with the applicant and staff is with respect to the area proposed for 22 bedrooms at the top of the ridge. The opponents' argument that this area contains the largest number of trees in good condition, size, height and age is compelling. The tables providing analysis of these trees in the opponents' submission identified above appears to prove their point, and that point is not directly rebutted by the applicant's evidence. The applicant relies heavily on the overall percentage of trees retained on the site and minimizes the information showing that the trees slated for removal at the top of the ridge are "significant" under both the applicant's and opponents analysis.

The five buildings at the top of the ridge and the associated parking appear be intended to meet the applicant's desire to obtain a minimum of 606 units on the site as a whole. While the applicant's desire for an economical rate of return on the PUD is an understandable goal, EC 9.8320(4)(b) requires that the PUD "be designed and sited to preserve significant trees to the greatest degree attainable or feasible." Attempting to place five buildings with 22 bedrooms at the top of the ridge, given the disproportionate removal of significant trees necessary to do so does not meet that standard. The Hearings Official reminds the parties that I don't deem relevant the applicant's self-imposed requirement to reach 606 units, nor the various planning staff changes and the consequent possibility that the applicant was given conflicting advice on the site plan. The Hearings Official is not unsympathetic impact of conflicting advice from staff if that occurred, but the Hearings Official is also not aware of a design imperative, expressed in this record, that would require dwelling units to be located at the top of the ridgeline. For this reason, that component of the applicant's Tree Preservation Plan does not meet EC 9.8320(4)(b).

(c) Restoration or Replacement.

- 1. For areas not included on the city's acknowledged Goal 5 inventory, the proposal mitigates, to the greatest degree attainable or feasible, the loss of significant natural features described in criteria (a) and (b) above, through the restoration or replacement of natural features such as:**

- a. Planting of replacement trees within common areas; or
- b. Re-vegetation of slopes, ridgelines, and stream corridors; or
- c. Restoration of fish and wildlife habitat, native plant habitat, wetland areas, and riparian vegetation.

To the extent applicable, restoration or replacement shall be in compliance with the planting and replacement standards of EC 6.320.

Staff Findings

For the portion of the subject property not included as part of the City's acknowledged Goal 5 inventory, subsection (1) applies. As described above, the significant natural features within this area of the property are the significant trees. While the applicant proposes preservation of the majority of the healthy significant trees on site, some will be removed to accommodate the proposed development. As a means to mitigate the loss of significant trees, and also to provide buffering and screening as addressed under other criteria, the applicant is proposing a 25 foot wide landscaped screening buffer along the southern and southwestern property line, as shown on Sheets C3.0 and L1.1 of the applicant's November 26, 2013 revised application materials. As shown Sheet L2.1 Landscape Prototypes, the landscaped buffers will include Douglas Fir, Ponderosa Pine, and Red Cedar, as well as vine maple and other native shrubs and ground covers. In addition to the buffers, the applicant is proposing the planting of additional trees and vegetation throughout the site as a means of restoration. To clarify timing of the buffer installation and restoration plantings, the following condition is appropriate:

- Prior to final occupancy of the first building, the applicant shall install the 25 foot wide landscaped buffers and restoration planting as proposed and shown on sheets L 1.1, L2.1 and L 2.2 of the November 26, 2013 site plans, and provide verification that they have been planted as proposed.

For the portion of the subject property that is included as part of the City's acknowledged Goal 5 inventory, subsection (2) applies. The acknowledged level of protection for the protected riparian area are the standards found in the /WR Water Resources Conservation zone (EC 9.4900 – EC 9.4980). The proposal complies with the /WR zone, including permitted and prohibited uses. Compliance with the /WR zone is further addressed below under the concurrent standards review application. Based on the above findings, available evidence and condition, this criterion is met.

Hearings Official Conclusions

The Hearings Official agrees with the staff findings and adopts them by reference. Although the opponents argue that the applicant's landscape plan does not call for reforestation, their comments do not appear to acknowledge staff's recommended condition. As noted above in the findings for EC 9.8320(4)(b), the tree inventory shows that not many trees in good condition exist in the middle section of the site. To the extent EC 9.8320(4)(c) requires those trees to be replaced, staff's condition is adequate to ensure that outcome. This criterion can be met.

- (d) **Street Trees.** If the proposal includes removal of any street tree(s), removal of those street tree(s) has been approved, or approved with conditions according to the process at EC 6.305.

Staff Findings and Hearings Official Conclusions

The applicant indicates that no street trees are proposal for removal. Staff notes that any tree within the right-of-way with a caliper measurement (at 6 inches above ground level) of 1 ½ inches or greater is defined as, and regulated as, a street tree. Based on the applicant's Tree Protection Plan (sheet TP-1), there are several street trees within the rights-of-way of Moon Mountain Drive and Laurel Hill Drive proposed for removal. Removal of these trees will be authorized in the PEPI process, along with payment of appraised values. To ensure that street trees are removed and replaced in accordance with City standards, the following condition is warranted:

- The final PUD site plans shall note that street tree removals must meet the permit and replacement value requirements of EC 6.305.

Based on the above findings, available evidence and condition, this criterion is met.

EC 9.8320(5): The PUD provides safe and adequate transportation systems through compliance with the following:

- (a) **EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways** (not subject to modifications set forth in subsection (11) below).
- (b) **Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.**
- (c) **The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.**

Staff Findings

The proposed street layout within the development provides a safe and adequate transportation system, subject to additional findings and conditions for compliance with EC 9.6805 through EC 9.6875, as provided below in subsection (5)(a). Findings in evaluation of EC 9.8320(11)(b) are also incorporated herein by reference as demonstration that the proposal

will comply with this criterion through further evaluation of the street design and construction at the time of privately-engineered public improvement (PEPI) review. Based on these findings, Public Works staff confirms that the proposed development complies with this criterion.

(a) EC 9.6800 through EC 9.6870 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection (11) below).

EC 9.6805 Dedication of Public Ways and EC 9.6870 Street Width

Pursuant to EC 9.6850 Dedication of Public Ways, as a condition of any development, the City may require dedication of public ways for bicycle and/or pedestrian use as well as for streets and alleys, provided the City makes findings to demonstrate consistency with constitutional requirements. The public ways for streets to be dedicated to the public by the applicant shall conform to the adopted right-of-way map and EC Table 9.6870.

Pursuant to EC 9.6870, when a street segment right-of-way width is not designated on the adopted Street Right-of-Way map, the required street width shall be the minimum width shown for its type in Table 9.6870 Right-of-Way and Paving Widths, although a greater width can be required based on adopted plans and policies, adopted Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways or other factors which in the judgment of the planning and public works director necessitate a greater street width.

Moon Mountain Drive, which is not identified on the adopted Street Classification Map or the adopted Right-of-Way Map (Fig. 60-61 of the Arterial and Collector Street Plan (ACSP)), is a local street. Based on the TIA submitted by the applicant, Moon Mountain functions as a medium volume local street. Per EC Table 9.6870, medium volume local streets are required to have between 20 and 34 feet of paving within a 50 to 60 foot of right-of-way range. Since the existing 60-foot right-of-way in Moon Mountain Drive matches the maximum width of EC Table 9.6870, no additional right-of-way is required for Moon Mountain Drive.

Likewise, **Laurel Hill Drive** is not identified on the adopted Street Classification Map or the adopted Right-of-Way Map. Based on existing development patterns to the south that would result in an expected ADT range of 250-750 trips per day and because there are several connecting streets, i.e., Moon Mountain Drive, East 25th Avenue, and Oakfern that disperse traffic from Laurel Hill Drive in the direction of Brackenfern, a major collector, it appears that Laurel Hill Drive functions as a low volume residential local street. Staff notes that the existing 50 foot right-of-way in Laurel Hill Drive consists of 30 feet on the west (development) side of the centerline and 20 feet on the east side of centerline. Since the existing right-of way in Laurel Hill Drive exceeds the maximum half-width as identified in EC Table 9.6870, no additional right-of-way is required for the portion of Laurel Hill Drive that is within City jurisdiction, i.e. abuts the easterly boundary of the proposed development site.

The remaining portion of Laurel Hill Drive that abuts the subject property (parallel to Interstate 5) is under the jurisdiction of ODOT. Referral comments from ODOT indicate that no improvements of Laurel Hill Drive are required, except for those that would apply to meeting

the intersection sight distance standard for a clear vision line for 445 feet, which is further addressed at EC 9.8320(6), below.

East 25th Avenue, which abuts the proposed development to the south is an unimproved 60 foot strip comprised of street right-of-way and City owned land that is not identified on the adopted Street Classification Map or the adopted Right-of-Way Map. Upon improvement, East 25th Avenue will function as a local street. Per EC Table 9.6870, low volume local streets are required to have between 20 and 28 feet of paving with 45 to 55 feet of right-of-way and medium volume local streets are required to have between 20 and 34 feet of paving with 50 to 60 feet of right-of-way. Since the existing 60-foot right-of-way width meets or exceeds the maximum required width for local streets, no additional right-of-way dedication is required for East 25th Avenue.

Since each of these right-of-way widths meet or exceed the required right-of-way width, there is no requirement for additional right-of-way dedication.

EC 9.6810 Block Length:

Block length standards are not applicable because no new local streets are proposed or required.

EC 9.6815 Connectivity for Streets:

To meet street connectivity standards, the proposed development must, at a minimum, provide extensions of the public way which are consistent with subsections (2)(b), (2)(c) and (2)(d). EC 9.6815(2)(b) requires street connections in the direction of any planned or existing streets within ¼ mile of the development site and connections to any streets that abut, are adjacent to, or terminate at the development site. EC 9.6815(2)(c) requires that the proposed development include streets that extend to undeveloped or partially developed land adjacent to the development site in locations that will enable adjoining properties to connect to the proposed street system. EC 9.6815(2)(d) requires secondary access for fire and emergency vehicles.

The proposed development is bordered by residential development to the west and southwest, Laurel Hill Drive to the north and east and City owned land to the south that is located in the alignment of East 25th Avenue. Moon Mountain Drive bisects the proposed development site between East 25th Avenue and Laurel Hill Drive.

In the November 26, 2013 revised written statement (page 26), the applicant requests an exception to subsections (2)(b), (2)(c) and (2)(d). To the extent an exception is necessary, staff recommends an exception to the requirement to provide a connection between Moon Mountain and Laurel Hill Drive and from East 25th Avenue pursuant to EC 9.6815(2)(g)(1) which requires the applicant to submit a local street connection study which shows that (a), the proposed street system meets the intent of the street connectivity provisions at EC9.6815(1) and (b), how undeveloped or partially developed properties within a quarter mile can adequately be served by alternative street layouts.

Based on the applicant's findings and Public Works referral comments, an exception to subsection (2)(b), (2)(c) and (2)(d) is warranted, to the extent such an exception it is necessary. The proposed development complies with (2)(e) as the construction of Moon Mountain Drive and Laurel Hill Drive will remain in the existing right-of-way and generally follow the existing grades of these streets. The remaining street connectivity standards at (2)(a) and (2)(f) are not applicable.

Given the available information and based on the foregoing findings, exception and future permit requirements; the proposed development complies with the street connectivity standards.

EC 9.6820 Cul-de-Sacs:

As no cul-de-sacs are proposed, this does standard not apply.

EC 9.6830 Intersections of Streets and Alleys:

These standards are not applicable because no new intersections are proposed or required.

EC 9.6835 Public Accessways:

The applicant proposes to construct two 10 foot wide multi-use paths (i.e. public accessways). One is proposed from the northwest corner of the development site across EWEB property to Augusta Street, and the second is proposed within the East 25th Avenue right-of-way from Moon Mountain Drive to Augusta Street. These paths will allow for easier pedestrian and access to the LTD bus route on Augusta (Fairmount No. 27) and also facilitate bicycle connections in the same direction.

EC 9.6840 Reserve Strips:

These standards do not apply because no new public streets are proposed or required and there is no need to restrict access to the existing streets of the development.

EC 9.6845 Special Safety Requirements:

There are no special safety requirements necessary to discourage use of the streets by non-local motor vehicle traffic.

EC 9.6850 Street Classification Map:

The proposal complies with this standard as discussed in EC 9.6870 Street Width, which is incorporated herein by reference.

EC 9.6855 Street Names:

This standard does not apply as there are no new streets.

EC 9.6860 Street Right-of-Way Map:

The proposal does not amend the right-of-way map; as such this standard is not applicable.

EC 9.6865 Transit Facilities:

Referral comments from Lane Transit District indicate that the closest transit stop is located on Augusta Street, within walking distance of the proposed development.

EC 9.6873 Slope Easements:

Because of terrain, slope easements may be required to facilitate the construction of streets and protect the structural integrity of the constructed roadway. Slope easements shall be granted in addition to the required street width listed in Table 9.6870 Right-of-Way Paving Widths. In the application materials, the applicant acknowledges that slope easements may be required and will be more precisely determined at the time of the PEPI review. Based on future permit requirements, the proposed development will comply with this standard.

EC 9.6875 Private Street Design Standards:

No private streets are proposed as part of the development.

Given that the above findings and available information, staff concludes that EC 9.8320(5)(a) is met.

(b) Pedestrian, bicycle and transit circulation, including related facilities, as needed among buildings and related uses on the development site, as well as to adjacent and nearby residential areas, transit stops, neighborhood activity centers, office parks, and industrial parks, provided the city makes findings to demonstrate consistency with constitutional requirements. “Nearby” means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can reasonably be expected to be used by bicyclists.

The applicant’s plans show pedestrian and bicycle circulation within the development via interconnected paths between the buildings and bicycle parking areas. Sidewalks will be provided along Moon Mountain Drive through the development site and Laurel Hill Drive along the eastern frontage. The applicant also proposes two bicycle/pedestrian paths from the development to Augusta Street to provide access to existing transit stops along August Street.

The revised application materials include a November 22, 2013 memo prepared by Kittleson & Associates, which addresses on-street parking and pedestrian crossings. Based on this memo, the applicant proposes pedestrian crossings, curb extensions and advance warning signs in Moon Mountain Drive, to better facilitate pedestrian movements across the street. Staff concur with the applicant’s proposal, and note that specific design details will be further evaluated through the PEPI process.

Referral comments from Lane Transit District (LTD) staff confirm that transit service is provided from Augusta Street, to the west via Route 27. LTD indicates that the frequency of service changes may have to occur to accommodate the students. LTD has had discussions with the developer regarding this. There is no guarantee that additional frequency will be implemented at this point. However, LTD indicates that additional transit facilities are required, including a pad and shelter at

each of the two bus stops on Augusta closest to the development. Per LTD, it would be incumbent on the developer to work with LTD on shelter placement and standards and in funding these amenities. The following condition of approval is warranted:

- The final PUD site plans shall note that the applicant shall install a pad and shelter at each of the two bus stops on Augusta Street closest to the development prior to final occupancy of the first building. The applicant shall coordinate with LTD regarding placement, design and funding of these transit facilities.

Consistent with this criterion, the proposed public sidewalks, streets and multi-use paths demonstrate compliance with the requirement to provide pedestrian, bicycle and transit circulation to adjacent and nearby attractive features.

(c) The provisions of the Traffic Impact Analysis Review of EC 9.8650 through 9.8680 where applicable.

Traffic Impact Analysis Evaluation (City File TIA 13-5)

A Traffic Impact Analysis (TIA) was submitted as part of the concurrent application package and evaluated in referral comments from Public Works staff. EC 9.8670(1) requires a TIA for developments that will generate 100 or more vehicle trips during any peak hour as determined by using the most recent edition of the Institute of Transportation Engineer's (ITE) publication *Trip Generation*. Based on the category of low rise apartments (ITE 221) the development is expected to generate 101 vehicle trips during the peak hour (0.62 trips per unit times 162 units = 101 trips).

Public Works staff indicates that the applicant has submitted a Traffic Impact Analysis in conformance with the Standards for Traffic Impact Analysis and the supplemental scoping memorandum. The applicant has proposed to utilize a trip generation rate established from other Landmark Student Housing Developments. The Landmark housing product does not fit the generalized "Apartment" data provided in ITE land use code 220. Public Works staff reviewed the trip generation data and determined it was studied and produced in conformance with ITE standards. Furthermore, the trip generation rate provided by the applicant was considerably higher than the generalized unit based generation rates provided in ITE. Public Works staff concurs the specialized trip generation rate best fit the development and provides a conservative estimate of trip generation erring on the side of caution for subsequent capacity and safety analyses.

The following is a summary of staff's findings in regards to the TIA approval criteria.

EC 9.8680(1): Traffic control devices and public or private improvements as necessary to achieve the purposes listed in this section will be implemented. These improvements may include, but are not limited to, street and intersection improvements, sidewalks, bike lanes, traffic control signs and signals, parking regulation, driveway location, and street lighting.

The purpose of TIA review is to ensure that developments which will generate a significant amount of traffic, cause an increase in traffic that will contribute to traffic problems in the area, or result in levels of service of the roadway system in the vicinity of the development that do not meet adopted level of service standards, provide the facilities necessary to accommodate the traffic impact of the proposed development.

The site is bounded by and split by an existing substandard street network. The surrounding streets are Laurel Hill Drive and Moon Mountain Drive. Laurel Hill Drive is a local street currently developed with two travel lanes only. There are no sidewalks or formal drainage controls. The road is rural in nature but the 25 mph advisories are appropriate for the terrain and the proposed development. Laurel Hill drive has a split jurisdiction. The Oregon Department of Transportation has jurisdiction where the road parallels Interstate 5 and the City of Eugene has jurisdiction where the road approaches Augusta and Moon Mountain Drive. Moon Mountain Drive is a local street currently developed with two travel lanes only. There are no sidewalks or formal drainage controls. The road is rural in nature but the 25mph advisories are appropriate for the terrain and proposed development. The site currently has no formal access points.

Referral comments from Public Works staff indicate that the applicant's engineer provided analyses in accordance with the standards of Traffic Impact Analysis. Traffic counts, trip generation, distribution and assignment were all performed in accordance with project scoping, Institute of Transportation Engineers (ITE) standards and industry standards.

The applicant has proposed to improve Moon Mountain Drive to full urban standards through the limits of the development including parking both sides. Public Works staff concurs with this proposal notes that it is consistent with the developed portions of Moon Mountain to the south. The applicant has removed parking and kept the street narrower in the existing steep areas of Moon Mountain Drive. Public Works staff concurs with this approach to reduce speeds and enhance safety. Laurel Hill Drive is proposed with a half street improvement along the frontage within City of Eugene jurisdiction. This is appropriate given the development fronts only one side of the street.

The applicant has proposed multiple driveways to serve the development. All access points are proposed to be taken from local streets and all appear to meet the access management criteria set forth in EC Chapter 7. Public Works staff did not identify any apparent safety or operation concerns with the proposed driveway locations. Proposed access points to Laurel Hill Drive shall be reviewed and approved by ODOT.

The applicant's engineer analyzed all intersections within the study area. All intersections are expected to operate within acceptable AM and PM adjacent street peak hour levels of service during the opening year and the 5 year planning horizon. The report identified 2 crashes in the vicinity but both appeared to be isolated incidents with no pattern of unsafe conditions. No specific pedestrian or bicycle operation or safety issues were identified. Public Works staff

agrees with the recommendation of no mitigation since no discernible pattern or cause could be identified.

The applicant has analyzed and identified all public and private improvements to be implemented. Based upon the discussion above, this criterion has been met.

EC 9.8680(2): Public improvements shall be designed and constructed to the standards specified in EC 9.6505 Improvements – Specifications. The requirement of improvements based on a traffic impact analysis does not negate the ability of the city traffic engineer to require improvements by other means specified in this code or rules or regulations adopted thereunder.

The applicant has proposed all public improvement in accordance with City Standards and Specifications. Therefore, this criterion is satisfied.

EC 9.8680(3): In addition to the above criteria, if the Traffic Impact Analysis Review was required based on EC 9.8670(4), the improvements shall also address the structural capacity of the street in the County's jurisdiction and address identified structural deficiencies, or reduction in the useful life of existing street structures related to the proposed development. Improvements may be needed to eliminate the identified structural deficiencies and to accommodate vehicle impacts to structures.

The TIA was not required based on EC 9.8670(4) in this case. As such, this criterion is not applicable

EC 9.8680(4): In addition to the above criteria, if the development is located within the S-WS Walnut Station Special Area Zone, and increased traffic the development would generate on streets within the Fairmount neighborhood to the south of the Walnut Station Special Area Zone shall be mitigated through the use of traffic calming strategies or other mechanisms designed to discourage such traffic.

The proposed development is not located within the S-WS zone. As such, this criterion is not applicable. **TIA Conclusion:** Based on the above findings, the proposed development complies with the TIA approval criteria.

Opponents' Arguments

The opponents' arguments related to EC 9.8320(5) can be summarized as follows:

- At the hearing and in multiple written comments opponents generally objected to an increase of approximately 3000 daily vehicle trips.

- Both Laurel Hill Drive adjacent to the subject property and the extension Moon Mt. Drive were intended to be temporary and improvements were to be made in the future. A more conventional PUD layout would allow the objectionable section of Laurel Hill Drive to be decommissioned. HE-13.
- Laurel Hill Drive is in poor condition and is dangerous. It is also in jurisdictional limbo with neither ODOT nor the City taking full responsibility for its maintenance.
- The applicant's TIA should have considered the most logical routes to the University of Oregon since that is where most residents will be heading. This could have negative impacts on Augusta Street, Riverview Street and Franklin Boulevard.
- Transit facilities are lacking and the applicant and LTD have not reached an agreement on providing increased service.

Applicant's Response

If the applicant directly responded to the opponents arguments, the Hearings Official cannot locate that narrative. Similar issues are addressed in Mr. Reeder's January 17, 2014 letter and are at least partially responsive to some of the opponents concerns about student travel to the university. And, the applicant did submit a January 10, 2014 response letter from Kittelson & Associates which responds to the opponents' arguments made at the December 18, 2013 hearing and covers the same issues set forth by the opponents in HE-13.

Hearings Official Conclusions

The Hearings Official generally concurs with staff's findings for EC 9.8320(5)(c) and adopts those findings by this reference. The Hearings Official concludes that the opponents' arguments are significantly undermined by the applicant's TIA and staff's review of the TIA explained above. Although the opponents generally object to the number of increased daily vehicle trips, they do not present evidence that the increase will necessarily lead to a significantly less safe transportation system in the area. The Hearings Official addressed similar assertions recently in PDT 13-1 (Oakleigh). Simply equating increased vehicle trips with safety problems without evidence is insufficient to show that EC 9.8320(5) cannot be complied with. Assertions are not evidence. The TIA, staff review of that information and related findings, and the January 10, 2014 Kittelson memorandum do constitute evidence. The staff's analysis and recommended conditions adequately address street connectivity, transit service and road condition. Similarly, the Kittelson report demonstrates that the specific requirements of EC 9.8320(5) are or can be met by the applicant. This criterion is met.

EC 9.8320(6): The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.

Staff Findings

Regarding soil erosion and slope failure, due to the size of the development and the site's proximity to a Goal 5 Resource, i.e. Laurel Hill Creek, an erosion prevention permit will be required prior to any ground-disturbing activities. Per the geotechnical report submitted by the applicant, no unsafe sub-surface conditions or soil conditions requiring extensive construction to mitigate were identified. With regard to risk of stormwater or flood hazard, no proposed structures are within a regulated special flood hazard area. The development itself will not result in unreasonable risk of flood per the stormwater management evaluation at EC 9.8320(11)(j).

Regarding emergency response, staff notes that the proposal includes two access points via Laurel Hill Drive. This portion of Laurel Hill Drive is located within ODOT right-of-way, thus the proposed access points will require ODOT approval. Referral comments from ODOT dated October 16, 2013 indicate that because the proposed driveways would connect to a roadway located on state highway right-of-way, ODOT believes the connections should meet Intersection Site Distance standards, as determined by ODOT. To that end, the applicant submitted a sight distance evaluation prepared by Kittleson & Associates, dated September 3, 2013 (included in the November 26, 2013 revised application materials as Exhibit I).

Although ODOT's comments indicate that ODOT disagrees with one of the assumptions used in the sight distance evaluation (design speed), ODOT followed up with an email dated October 18, 2013 clarifying that it is not ODOT's intent to have the applicant's engineer revise the sight distance evaluation provided the City sets forth a condition of approval that the two driveways (accesses) on Laurel Hill Drive meet intersection sight distance for a 40 mph design speed. ODOT further noted that they believe this to be achievable through brushing and, if necessary tree removal, although ODOT fully realizes that accurate site information related to the topography and existing vegetation, along with the exact extent of any brushing or tree removal is not known. The following condition is appropriate in this case:

- Prior to final PUD approval, the applicant shall provide verification from ODOT that the two driveways (accesses) on Laurel Hill Drive meet intersection sight distance for a 40 mph design speed.

Based on the above findings, available information and condition, this criterion is met.

Opponent Arguments

The opponents identify potential slope failure as the only reason why this criterion is not met. Their fundamental argument is that the risk analysis modeling done by the applicant to assess the potential for slope failure is flawed because it does not take into account the rainy season and the influence of water on the slope once the grading cuts are made for the drive aisles and building footprints. The opponents argue that the same type of cuts were made in the nearby

StoneCrest PUD (unbuilt) and those cuts led to a mass soil movement of approximately 25,000 cubic yards. HE -13.

Mr. Schlieder also submitted a January 17, 2014 letter responding to the applicant's geotechnical consultants (January 10, 2014 Letters from Ryan White and Carole Knapel – PT-13 Ex 13). He opined, in his professional capacity as an engineering geologist, that water entering the grading cuts had the potential to increase pore pressures to the point where "sliding movement will occur."

Applicant's Response

The applicant appears to rely on the geotechnical report submitted with the application materials and the two letters identified by Mr. Schlieder to show compliance with EC 9.8320(6).

Hearings Official Conclusions

The Hearings Official generally agrees with staff's findings and adopts them by reference. The applicant and opponent letters identified above represent dueling expert testimony. If that testimony were more in agreement I would find that EC 9.8320(6) is satisfied. However, the subject property contains significant slopes in areas (perhaps up to 15 percent) and certainty about long term slope stability is a serious public safety concern. In this duel of the experts, Mr. Schlieder appears to have gotten the last word and I cannot find responsive argument or evidence from the applicant that rebuts Mr. Schlieder's January 17, 2014 expert testimony. Given that the findings above require that the application be denied on other grounds, the Hearings Official concludes that it would be prudent to approach the slope stability debate with caution. As the record stands, there is a significant and unresolved question about whether the applicant's risk assessment modeling is accurate. I conclude that Mr. Schlieder's testimony throws sufficient doubt on the applicant's evidence to at least question its reliability. *Walmart Stores Inc. v. City of Bend*, 52 Or LUBA 261, 272 (2006). For those reasons, the Hearings Official concludes that EC 9.8320(6) is not met.

EC 9.8320(7): Adequate public facilities and services are available to the site, or if public services and facilities are not presently available, the applicant demonstrates that the services and facilities will be available prior to need. Demonstration of future availability requires evidence of at least one of the following:

- (a) Prior written commitment of public funds by the appropriate public agencies.
- (b) Prior acceptance by the appropriate public agency of a written commitment by the applicant or other party to provide private services and facilities.
- (c) A written commitment by the applicant or other party to provide for offsetting all added public costs or early commitment of public funds made necessary by development, submitted on a form acceptable to the city manager.

Staff Findings and Hearings Official Conclusions

The record does not appear to contain a dispute over this criterion. Staff found, and Hearings Official agrees, the applicant's statement that adequate public utilities and services, including wastewater service and stormwater, are presently available to the site as indicated on the applicant's plans. Further findings at EC 9.8320(11)(b) and (j), regarding public improvements and stormwater respectively, are incorporated herein by reference as further evidence that these services are available to the site. Given these findings, the proposal is in compliance with this criterion. Staff adds that the provision of such services will be formalized prior to development through the provision of an Engineering and Construction Agreement and construction bond. Additionally, the provision for water and electric services is subject to review by EWEB staff.

EC 9.8320(8): Residents of the PUD will have sufficient usable recreation area and open space that is convenient and safely accessible.

Staff Findings and Hearings Official Conclusions

The proposed development includes over 10 acres proposed as open space throughout the development. Additionally, the proposal includes a clubhouse and outdoor pool for use of the residents, as well as a system of paths and two bicycle/pedestrian paths that lead off-site. Staff concludes that sufficient usable recreation and open space would be convenient and safely accessible as required by this criterion.

EC 9.8320(9): Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.

Staff Findings

As noted in the written statement, stormwater runoff from the development site and public street, will be collected in a piped system and discharged to the existing downstream drainage course near the northwest corner of the development site or to the existing piped system in the East 25th Avenue right-of-way. As discussed at EC 9.8320(11)(j), which is incorporated by reference, there is adequate capacity in the downstream modeled portions of the public system. It is further noted that the piped outfall to the existing drainage course will be constructed consistent with City standards to reduce the velocity of stormwater entering the drainage, which is within a protected Goal 5 area. The discharge of stormwater into the Goal 5 area is further addressed as part of the concurrent standards review. Further, an erosion prevention permit will be required prior to any ground-disturbing activities that would result in large quantities of sediment leaving the construction site.

Additionally, water quality manholes will provide treatment of the stormwater runoff before it enters the existing public system. Stormwater management is discussed in greater detail later in this report at EC 9.8320(11)(j). Based on these findings the development will comply with this criterion.

Opponent Arguments

There was some discussion of the applicant's stormwater management plan at the public hearing, and Tom Halferty submitted written comments at the hearing and on January 17, 2014. Those comments range from concerns about resident cutthroat and critical habitat for Upper Willamette Chinook to concerns about how and whether the stormwater will be treated prior to discharge.

Applicant's Response

The applicant submitted a response from environmental engineer Pete Miller dated January 10, 2013. PT-11 Ex. 13.1.

Hearings Official Conclusions

The Hearings Official finds that Mr. Halferty's comments, while well intentioned with respect to protecting resident fish and preserving habitat, do not contain evidence that the alleged failings in the applicant's stormwater management plan will actually come to pass. Mr. Miller's response is directly on point and detailed. In addition, Mr. Miller cites to and includes relevant storm event data that shows that it is unlikely that the proposed system will not be able to adequately treat and discharge the resulting stormwater. The calculations and evidence Mr. Miller presents is sufficient to conclude that the PUD as proposed will not cause downstream "erosion, scouring, turbidity, or transport of sediment." This criterion is met.

EC 9.8320(10): Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection (11) below.

Staff found that this criterion is inapplicable and not party disputes that finding.

EC 9.8320(11): The PUD complies with all of the following:

- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:**
 - 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or**
 - 2. The /WQ Management Area.**

Staff Findings

The development is not creating any new residential lots; as such, EC 9.2760 Residential Zone Lot Standards do not apply. Although the subject property is within the /WR zone, no new lots

are being created.

With regard to density, based on the R-1 Low-Density Residential zoning and EC 9.2750 Residential Zone Development Standards, the subject property is permitted to have a maximum net density of 14 units per acre. EC 9.2751(1)(b) explains that net density is the number of dwelling units per acre of land in actual residential use and reserved for the exclusive use of residents in the development, such as common open space or recreational facilities. EC 9.2751(1)(c) states that, for calculating net density, the acreage of land considered part of the residential use shall exclude public and private streets and alleys, public parks, and other public facilities. The applicant notes that EC 9.8310(4)(a) allows for residential density calculations to include areas in easements if it is demonstrated the easement will benefit residents of the proposed PUD. In this case, the easement areas are used for parking courts and drive aisles.

The subject property is approximately 823,463 square feet or 21.8 acres. Including the areas under easement, the proposed 162 units translates to an overall density of 7.42 units per acre. If the area of the two easements, which contain overhead electric facilities, are excluded (approximately 8,599 square feet), the proposed 162 units translates to a net density of 8.66 units per acre. In either case (including or excluding the area of the easements) the proposal meets density requirements. Based upon these findings and the available information, this criterion has been met.

(b) EC 9.6500 through EC 9.6505 Public Improvement Standards.

EC 9.6500 Easements

This section authorizes the City to require dedication of easements for wastewater sewers and other public utilities and access under certain circumstances. This section also prohibits obstructions within public easements.

The applicant's site plans indicate that there are three existing EWEB easements on the subject property, including two that contain overhead electrical facilities. The third, a 40 foot wide easement running east/west through the middle of the site does not contain any EWEB facilities. The site plans show buildings within portions of the easement. The applicant provided a letter from EWEB conveying EWEB's intention to vacate the easement, or a portion thereof. To ensure the easement, or a portion thereof, is vacated, the following condition of approval is appropriate:

- Prior to final PUD approval, the applicant shall provide verification from EWEB that all or a portion of the 40 foot wide EWEB easement, as necessary for construction, is vacated.

As noted in subsection (2) below, the applicant will need to obtain a public easement over the alignment of the proposed public wastewater line as it crosses the adjacent EWEB property (tax lot 1000 of Assessor's Map 8-03-04-11). Also, the applicant is responsible for the procurement of any public easements necessary for the construction of the proposed 10-foot wide multi-use

path crossing the EWEB property. The easements, which will be subject to review and approval prior to PEPI approval, shall be on standard City forms. Otherwise, the applicant does not propose any public easement dedications nor are there any public improvements that would result in the need for additional public wastewater or stormwater easements on the subject property.

EC 9.6500 requires that no building, structure, tree or other obstruction shall be placed on or located in a public utility easement and that prior to approval of a final PUD, final site review plans or final plats, the above restriction shall be noted thereon. Therefore, to ensure compliance with this standard, the following condition is warranted:

- The following restriction shall be shown on the final PUD site plans: “No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement.”

Based on the above findings, conditions and future permit requirements, the proposed development will comply with EC 9.6500.

EC 9.6505 Improvements–Specifications

This section requires all public improvements be designed and constructed in accordance with adopted plans and policies, the procedures specified in EC Chapter 7, and standards and specifications adopted pursuant to EC Chapter 7. Additionally, all developments are required to make and be served by the following infrastructure improvements including water, sewage, streets, street trees, street lights, sidewalks, accessways, and stormwater drainage. The applicant proposes all public improvements to be privately engineered and constructed.

The configuration and size of the proposed improvements will be subject to further review and approval by the City Engineer upon review of the design and supporting analysis prepared by the applicant’s engineer during the privately-engineered public improvement (PEPI) permit process. An Engineering and Construction Agreement specifying requirements for the private construction of public improvements, submitted prior to Final PUD approval, will ensure compliance with EC 9.6505. Therefore, the following conditions of approval are appropriate:

- The applicant shall submit an Engineering and Construction Agreement for the private construction of public improvements prior to final PUD approval.
- The following note shall be added to the final PUD site plans: “Public Improvements shall be placed on warranty prior to the first connection to the public wastewater system.”

EC 9.6505(1) Water Supply

Water service for the proposed development must be provided in accordance with Eugene

Water and Electric Board (EWEB) policies and procedures. Referral comments from EWEB staff indicate that water service is available from existing water mains in the vicinity. EWEB will require any new main extensions to be “looped” in order to maintain water quality and reliability standards.

Based on the above findings, the PUD will comply with EC 9.6505(1).

EC 9.6505(2) Sewage

This standard requires all developments to be served by wastewater sewage systems of the City, in compliance with the provisions of EC Chapter 6. To serve the portion of the development that is located west of Moon Mountain Drive, the applicant proposes to construct a privately owned wastewater system within the development site. The applicant also proposes to extend the existing 8 inch public mainline from manhole no. 3843 (located near the southwest corner of tax lot 1000 of Assessor’s Map 18-03-04-11) in an easterly direction along the southerly boundary of tax lot 1000 to provide a connection point for the private system. Staff notes that tax lot 1000 is under the control of EWEB. Therefore, the applicant will need to obtain an off-site public wastewater easement from EWEB to allow for the construction and maintenance of the proposed public wastewater line. Staff also notes that since the proposed wastewater extension is also located within a Goal 5 resources area, it is also subject to concurrent standards review application (SDR 13-01), which is addressed below, following the evaluation of the tentative planned unit development.

To serve the remainder of the development (east of Moon Mountain Drive and near Laurel Hill Drive), the applicant proposes to extend the existing public mainline within Moon Mountain Drive from manhole no. 3742 (located at the intersection of Moon Mountain Drive and East 25th Avenue). The applicant’s proposal demonstrates conceptual compliance with applicable sewage specifications, subject to a more detailed review during the subsequent building and PEPI permit processes.

EC 9.6505(3) Streets and Alleys and (4) Sidewalks

EC 9.6505(3)(a) and (b) requires all streets in and adjacent to the development site to be paved to the width specified in EC 9.6870, and improved according to adopted standards and specifications pursuant to EC Chapter 7, unless such streets have already been paved to that width. The improvements are to include drainage, curbs and gutters, sidewalks, street trees and street lights adjacent to the development site according to the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways and standards and specifications adopted pursuant to Chapter 7 of this code and other adopted plans and policies.

The applicant proposes to construct full street improvements in Moon Mountain Drive from the East 25th Avenue right-of-way to Laurel Hill Drive with paving that varies from 22 feet to 36 feet and curbside sidewalks and to construct half- street improvements in Laurel Hill Drive adjacent to the easterly boundary (within the City jurisdiction) with 11-foot wide paving and

curbside sidewalks to the north of and setback sidewalks to the south of the Moon Mountain Drive intersection.

The applicant's proposed street improvements demonstrate conceptual compliance with these standards, subject to the following comments and subject to a more detailed review during the PEPI permit process.

Staff supports the applicant's proposal for curbside sidewalks based on (Section F - Sidewalks) of the Local Street Design Standards in Exhibit "A" - Design Standards, which allows that "curbside sidewalks and sidewalks on one side of the street [may be permitted] in special circumstances, such as to reduce excessive impacts to topography, wetlands, drainageways, and other natural features".

Sidewalks along the entire frontage of the proposed development shall be constructed during the PEPI process and removal of street trees, which, as previously noted, are required to meet the permit and replacement value requirements of EC 6.305, will be authorized through the PEPI permit. As an informational item, staff notes that at the time of the PEPI (or Building Permit review), access connections from the public streets under City jurisdiction will be required to be of the standard driveway apron type, rather than the curb return type.

The applicant's proposal to plant trees in the public right-of-way (see Sheet L1.1 of the November 26, 2013 revised site plans) is conceptually acceptable; however prior to planting the trees, the applicant shall obtain a Street Tree Planting Permit (for which there is no fee) from Urban Forestry.

The applicant is not proposing street improvements in East 25th Avenue. In supplemental information dated September 12, 2013, the applicant provided conceptual profiles which demonstrate that a street connection in East 25th Avenue between Moon Mountain Drive and Laurel Hill Drive would not meet street standards due to slopes/grade and therefore is physically precluded. Therefore, there are no further street improvement requirements in East 25th Avenue between Moon Mountain Drive and Laurel Drive.

Based on the above findings, conditions and future PEPI permit requirements, the proposed PUD will comply with EC 9.6500.

EC 9.6505(5) Bicycle Paths and Accessways.

Per the findings at EC 9.6835, which are incorporated by reference, the applicant proposes to construct two 10-foot wide multi-use paths from the development site to Augusta Street. The proposed paths will be designed and constructed through the PEPI process. Staff notes the final design, including details such as location, lighting and treatment of stormwater will be determined during the PEPI review and that it is the responsibility of the applicant to obtain the needed easements prior to issuance of the PEPI permit. Additionally, since the multi-use path at the northwest corner of the development site is located within a Goal 5 resource, is

also subject to concurrent Standards Review (SDR 13-01), which is addressed below, following the evaluation of the tentative planned unit development.

(c) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas - Standards.

These standards do not apply because the subject property is not located within a flood plain or special flood hazard area.

(d) EC 9.6710 Geological and Geotechnical Analysis.

The geotechnical analysis requirements beginning at EC 9.6710 apply because, pursuant to EC 9.6710(2)(a) and (b), the proposed development is a PUD that has slopes in excess of 5 percent and includes construction of a public street, storm drainage and wastewater systems. A Level Two Analysis is required per EC 9.6710(5)(a) and (b) because the development is a PUD with slopes in excess of 10 percent and includes public construction on slopes that exceed 10 percent. The applicant submitted a report entitled Geotechnical Engineering Report – Moon Mountain Student Housing – Eugene, Oregon, dated January 23, 2013, which was prepared by PBS Engineering + Environmental, Inc. and stamped by Ryan White, P.E, G.E. and Peter Hughes, R.G., C.E.G..

Public Works staff confirms that the applicant's analysis, complies with Administrative Order AO-58-02-25-F and meets the Level Two Analysis requirements of EC 9.6710(4)(a) including a compilation of record geological data, analysis of site characteristics, sub-surface investigation and testing to establish soil types and distribution, and a report that includes site and soil characteristics in relation to the proposed development, identification of potential problems, and recommendations for design and construction techniques consistent with other standards applicable to the development proposal.

As supplemental information, the applicant submitted a letter from Ryan White, dated September 19, 2013 addressing slope stability, which had been omitted from the original geotechnical report because grading plans had not yet been prepared. The letter concludes that if the site grading and proposed retaining walls are constructed in accordance with the geotechnical engineering report, the slope stability will exceed the generally accepted factors of safety for new development. As part of the November 26, 2013 revised materials, the applicant submitted a memo prepared by Ryan White (dated November 22, 2013) that also concludes that the revised proposed grading plan should not result in slope stability factors of safety below the generally accepted values for new development.

PBS also prepared a pavement report entitled Pavement Design Report – Moon Mountain Student Housing – Eugene, Oregon, dated August 2, 2013, was prepared by PBS Engineering + Environmental, Inc. and is stamped by Ryan White, P.E, G.E. The report addresses existing conditions and makes construction recommendations for Moon Mountain Drive and Laurel Hill Drive.

Public Works staff concurs with the applicant's geotechnical assessment. Adherence to the report recommendations will be required during the subsequent PEPI and building permits. Based on these findings and future permit requirements, the development complies with this criterion.

(e) EC 9.6730 Pedestrian Circulation On-Site.

The standards for on-site pedestrian circulation at EC 9.6730 are applicable to multi-family developments. The standards require pedestrian paths from every unit to all other units, from every unit to community facilities and from every building within 40 feet of a street to the right of way line. As shown on Sheet 3.0 of the applicant's site plans, pedestrian paths are provided consistent with this requirement. Review of additional design details for compliance with these standards will need to occur at the time of building permit.

(f) EC 9.6735 Public Access Required.

- (1) Except as otherwise provided in this land use code, no building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this land use code.**

The development will have access onto two public streets, Moon Mountain Drive and Laurel Hill Drive, and frontage on East 25th Avenue, consistent with this standard.

- (2) Access from a public street to a development site shall be located in accordance with EC 7.420 Access Connections – Location. If a development will increase the development site's peak hour trip generation by less than 50% and will generate less than 20 additional peak hour trips, the development site's existing access connections are exempt from this standard.**

The proposed development site is subject to this standard. As depicted on Sheet C3.2 – Street Connectivity Plan, the applicant proposes four access points to Moon Mountain Drive, which is under City jurisdiction and also proposes two access points to Laurel Hill Drive, which is adjacent to the northerly boundary and under ODOT jurisdiction. Public Works staff confirms that the proposed development complies with subsection (1)(a) since the proposed access connections will not encompass a municipal utility, subsection (1)(b) since no portion of the adjacent roadways exceed 15 percent (Sheet C3.2) and with subsections (3)(a) and (3)(b) since each of the proposed access connections will be located more than 20 feet from the end of a curb radius and since there will be more than 22 feet of full height curb between each of the proposed access connections. The remaining requirements of this subsection are not applicable.

(g) EC 9.6750 Special Setback Standards.

As discussed previously at EC 9.6805 and EC 9.6870, which is incorporated herein by reference, Laurel Hill Drive and Moon Mountain Drive comply with applicable right-of-way width requirements. No special setbacks are required for future right-of-way or public utility easements.

(h) EC 9.6775 Underground Utilities.

According to the applicant's written statement, all on-site utilities will be placed underground, consistent with this standard. To ensure compliance with this standard, the following condition of approval is necessary:

- The final PUD site plans shall note that all on-site utilities will be placed underground consistent with EC 9.6775.

As conditioned, the development will comply with this standard.

(i) EC 9.6780 Vision Clearance Area.

In the applicant's November 26, 2013 revised application materials (as part of Exhibit I), the applicant identifies vision clearance triangles at the public street intersection of Laurel Hill Drive and Moon Mountain Drive. Staff confirms that the entire vision clearance area at this intersection is within the public right-of-way. However, based on Sheet C2.0 – Alta Survey, several street trees are located within the vision clearance area and will likely be removed at the time of construction of public sidewalks. Regardless, since the vision clearance area is not located within private property, there is no obligation for the applicant to remove any existing obstructions as a condition of development.

(j) EC 9.6791 through EC 9.6797 regarding stormwater destination, pollution reduction, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

The applicant originally submitted a Stormwater Drainage Report for The Retreat at Eugene, PUD Phase, prepared by KPFF Consulting Engineers, dated July 2013. The report addresses sizing of the closed pipe public system and proposed pollution reduction manholes as well as for infiltration planters located near the easterly boundary at Laurel Hill. As part of the November 26, 2013 revised application materials, the applicant provided a supplemental stormwater memo and report prepared by KPFF Consulting Engineers that addresses the changes to the proposed PUD application. The proposed changes include a reduction of building footprints and the increased use of pervious pavements to reduce impervious areas. The net effect of changes will modify the site hydrology resulting in reduced duration and intensity of runoff.

In regards to EC 9.6791 Stormwater Destination, Public Works staff confirms that proposed development is located within Sub-basin LHRA-040 and LHRA-0051 of the Laurel Hill Basin. Runoff

from the site will be largely directed to three separate pipe systems. The majority of the development site that is located north and west of Moon Mountain Drive will be routed through Pipe Runs A and B within the development site to the existing drainage way located in the northwest corner of the site. Runoff from the southeast corner of the site will be collected in Pipe Run C and discharged to the existing public storm drain system in Moon Mountain Drive.

Staff confirms that both the drainage way and the downstream public system in Augusta Street were modeled in the Eugene Stormwater Basin Master Plan - Volume IV of VII for the Laurel Hill Basin and also notes that the percentage of impervious surface area for the development is consistent with the assumptions used for the two sub-basins. The applicant did not provide documentation that there is adequate capacity in the existing piped system in lower Moon Mountain Drive and in the East 25th right-of-way to allow for the discharge of additional storm water from the private development on the southeast side of Moon Mountain Drive. Therefore, at the time of the PEPI review, the applicant will be required to provide the appropriate analysis and upgrade the existing system if needed. In addition to the above piped systems, as noted above, infiltration planters are proposed for the disposal of runoff from the above referenced units located near Laurel Hill Drive.

Referral comments from Public Works staff notes the applicant's revised application materials provide runoff calculations showing a reduction in the duration and intensity of the flood control events. The City of Eugene previously constructed all flood control improvements as identified in the approved stormwater basin master plan for the Laurel Hill Valley. The proposed development site for the Retreat is consistent with the density and impervious area assumption made in the sub-basing plans. The basin master plans did not identify any downstream flooding as a result of the future land use scenario. Public Works staff agree there is adequate capacity in the conveyance system and the project is consistent with the adopted flood control strategies for the Laurel Hill Valley.

In regards to EC 9.6792 Stormwater Pollution Reduction, the applicant proposes to construct privately maintained water quality manholes (Contech CDS) at the downstream end of each of the three Pipe Runs and to construct a water quality manhole at the southerly end of Moon Mountain Drive in order to treat storm water runoff from the public street. In addition to the above piped systems, as noted above, infiltration planters are proposed for the treatment and disposal of runoff from the above referenced units located near Laurel Hill Drive.

In response to the revised application materials, Public Works staff notes that the applicant has proposed reducing the project impervious surface areas by reducing building footprints and replacing impervious asphalt with pervious pavements. The applicant provided hydrological reports that identify the required sizing of the water quality systems. The reduction in impervious areas will result in an equivalent size reduction of the required water quality facilities. The applicant has identified approved water quality facilities and demonstrated facility sizing can be implemented on-site and within public rights of way.

Based on the above findings, staff confirms that the proposed facilities show conceptual

compliance with the Destination and Pollution Reduction standards, subject to a more detailed review during the PEPI and building permit reviews for compliance with applicable standards.

EC 9.6793 Stormwater Flow Control does not apply because runoff from the development site is not discharged into a headwaters stream or into an existing open waterway that is above 500 feet in elevation.

EC 9.6794 Stormwater Oil Control applies because the development has more than 100 off-street parking spaces. In supplemental information dated September 12, 2013, the applicant asserts that the proposed water quality facilities "will separate oils and other pollutants from the stormwater, preventing them from reaching the public drainage way." Additionally, the applicant notes that all inlets will include traps which also act as oil-water separators. Staff notes that adherence to the oil control requirements will be more precisely determined during the building permit process.

In regards to EC 9.6795 Stormwater Source Controls, the applicant indicates that this criterion is not applicable as the proposed development does not include any source points. However, staff notes that it is common for trash disposal systems, such as dumpsters to be utilized for most buildings and parking areas, therefore the proposed development may be subject to source control standards at the time of the development permit. A more detailed review for specific source control measures will occur during the subsequent building permit process for compliance with this standard and the City's Stormwater Management Manual.

In order to ensure consistency with these stormwater management standards, particularly with respect to Oil Control and Source Control standards, the following condition is warranted:

- The final PUD site plans shall note that design details of the proposed stormwater management facilities are subject to review and approval during the building permit process for compliance with applicable standards and the City's Stormwater Management Manual.

In regards to EC 9.6796 Dedication of Stormwater Easements, subsection (3)(a) requires the dedication of public stormwater easements where necessary to extend public drainage facilities and services to adjoining properties. As previously noted, with the exception of a water quality manhole that is located within Moon Mountain Drive and is necessary for the treatment of stormwater runoff within the public right-of-way, the proposed storm systems and associated water quality manholes will be privately maintained. Therefore there is no requirement for the dedication of public stormwater easements as a condition of development.

EC 9.6797 Stormwater Operations and Maintenance applies to all facilities designed and constructed in accordance with the stormwater development standards. This section also specifies when, and under what conditions, the public will accept functional maintenance. Consistent with these standards, the applicant proposes private operation and maintenance of the on-site stormwater management facilities. To ensure compliance with EC 9.6797(3)(c), as proposed, the following condition of approval is recommended.

- The final PUD site plans shall note: "On-site stormwater management facilities will be privately owned and operated. An operation and maintenance plan will be developed consistent with the City's Stormwater Management Manual, and notice of this plan will be recorded, during the building permit process."

With the findings, conditions, and future permit requirements noted above, staff finds that this criterion will be met.

(k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.

The applicable development standards for features explicitly included in the application, which have not already been addressed by other PUD approval criteria and related standards, are as follows:

- EC 9.2750 Residential Zone Development Standards
- EC 9.2795 Solar Setback Standards
- EC 9.5500 Multiple-Family Standards
- EC 9.5650 Recycling – Small Collection Facility Standards and EC 9.6740 Recycling and Garbage Screening
- EC 9.6105 Bicycle Parking Space Standards
- EC 9.6410 Motor Vehicle Parking Standards
- EC 9.6600 Sign Standards
- EC 9.6725 Outdoor Lighting Standards

The development complies with some of these standards, as noted below. Where the development does not comply with these standards, as described in greater detail below, the applicant has generally requested a modification ("proposed non-compliance"), which is allowed through the PUD process, if the following PUD purpose statements are met.

EC 9.8300 Purpose of Planned Unit Development. The planned unit development (PUD) provisions are designed to provide a high degree of flexibility in the design of the site and the mix of land uses, potential environmental impacts, and are intended to:

- (1) Create a sustainable environment that includes:
 - (a) Shared use of services and facilities.
 - (b) A compatible mix of land uses that encourage alternatives to the use of the automobile.
 - (c) A variety of dwelling types that help meet the needs of all income groups in the community.
 - (d) Preservation of existing natural resources and the opportunity to

- enhance habitat areas.
 - (e) **Clustering of residential dwellings to achieve energy and resource conservation while also achieving the planned density for the site.**
- (2) **Create comprehensive site plans for geographic areas of sufficient size to provide developments at least equal in quality to those that are achieved through the traditional lot by lot development and that are reasonably compatible with the surrounding area.**

Residential Zone Development Standards

With regard to EC Table 9.2750 Residential Zone Development Standards, the development complies with the following: density (below 14 units per net acre); interior yard setbacks (5 feet); front yard setbacks (10 feet) and the maximum 50 percent lot coverage.

Regarding building height, based on the untitled table provided in the November 26, 2013 revised application materials (between pages 38 and 39) it appears that only 9 of the 51 proposed buildings comply with the maximum allowable building height of 30 feet in the R-1 zone (37 feet for buildings with roof slopes 6:12 or steeper). Staff notes that the applicant has not provided the roof slopes for the proposed buildings nor indicated which buildings comply with building height. Rather, the application materials include a request for a modification to the 30 foot height limit, and the overall building height of each building. As such, for the purposes of this standard, staff's evaluation is based on the 30 foot building height limit only (not 37 feet). As noted earlier, the calculated building heights provided by the applicant (in the table) are not consistent with the heights as shown or measured on the proposed building elevations. Staff is unable to confirm the accuracy of these heights without accurate elevations of each building and associated grade. For the purposes of this evaluation, the heights in the table were used.

As noted at EC 9.2751(1)(e), maximum building height may be modified with an approved planned unit development. The applicant has proposed non-compliance to the building height limitation due to "the site-integrated design and the flexibility of the PUD criteria, the design height of the buildings should be accepted for this development" (page 38 of November 26, 2013 revised written statement).

Further, the applicant states that the "placement of the buildings have been selected to in order to follow the contours of the site, preserve existing trees and vegetation and minimize the cut and fill necessary for construction while maintaining the necessary density for the development" and that "building elevations, representational photographs and other visual materials have been submitted to demonstrate that the proposed development is compatible in build, height and scale with neighboring developments and uses."

As noted elsewhere in this report, including under the South Hills Study policy regarding visual impact and scale, bulk and height at EC 9.8320(2), and the criteria pertaining to adequate screening at EC 9.8320(3) and compatibility at EC 9.8320(13), the applicant has not provided enough information to fully evaluate the adequacy of screening from surrounding properties,

nor has the applicant provided adequate visual analysis to fully evaluate how the proposed project is reasonably compatible and harmonious with surrounding properties. Furthermore, based on the available information, staff also finds that the intensity of the proposed development, coupled with expansive parking areas, cannot be adequately screened from surrounding properties and is not compatible with surrounding land uses. As designed, the project is inconsistent with the PUD purpose statements including the promotion of compatible and clustered development. The placement, number, scale and overall mass of these large multi-family buildings, combined with the expansive parking areas, do not fulfill those objectives. As such, staff does not support the applicant's request to exceed allowable building heights.

Solar Setback Standards

With regard to 9.2795 Solar Setback Standards, EC 9.2795(3) grants an automatic exemption to these standards because the buildings closest to the northern property lines would shade a non-developable area, namely Laurel Hill Drive and Moon Mountain Drive. All remaining buildings exceed the solar setbacks.

Multiple-Family Standards

With regard to EC 9.5500 Multiple-Family Standards, the proposal complies with several of the standards. Only those standards where the development does not comply or where the applicant has proposed non-compliance are addressed below.

(4)(b) Street Frontage: This standard requires at least 60 percent of the site frontage abutting a street to be occupied by a building or enhanced pedestrian space. The applicant is requesting non-compliance with this standard along Laurel Hill Drive and Moon Mountain Drive (see page 39 of the November 26, 2103 revised written statement). Staff concurs with the applicant's request for proposed non-compliance with this standard, given the size (22 acres) and characteristics (including the natural resources and slopes) of the site, to allow for design flexibility and natural resource preservation, consistent with the purpose of the planned unit development

(6)(a) Maximum Building Dimension: This standard requires that any building within 40 feet of a front lot line not exceed 100 feet. The applicant identifies building 138 as not meeting this standard. Similar to the evaluation above, under building height, staff cannot concur with the applicant's request to exceed maximum building dimension. As noted above, the applicant has not provided adequate demonstration regarding how the proposed development is compatible and harmonious with adjacent development, especially in terms of bulk, scale and height, expansive parking and visibility. Furthermore, based on the available information, staff also finds that the intensity of the proposed development, including the scale, mass and overall number of large multi-family buildings, coupled with expansive parking areas, cannot be adequately screened from surrounding properties and is not compatible with surrounding land uses.

(6)(b) Windows: This standard requires that street facing facades contain windows covering a

minimum of 15 percent of the facade on each floor level. While a number of the facades meet this request, the applicant has requested proposed non-compliance for certain building faces (see page 41 of the November 26, 2103 revised written statement). Staff concurs with the applicant's request for proposed non-compliance with this standard, given that the non-compliant facades are typically a significant distance from the street, screened by existing trees or the proposed landscape buffers, or are constructed below street elevation and screened by the elevation separation.

(8) Landscape Requirements: It appears that subsections (a) Minimum Landscape Area and (b) Compliance with Landscape Standards are met. Regarding subsection (c)1. Required Landscaping in Yards Abutting Streets, which requires landscaping in yards abutting streets to meet the Basic Landscape Standard (L-1), staff notes that this standard is not met for all buildings. As a condition of approval, the final PUD site plans shall note that compliance with the Landscape Standards beginning in EC 9.6200 will be determined at the time of building permit. Staff recommends that the final PUD site plans show all required landscaping at a more conceptual level - identified by type, such as L-1, as opposed to providing a detailed planting plan – to allow for substitutions depending on plant availability.

(10)(a) Block Structure: This standard requires that multi-family developments of eight or more acres in size be developed as a series of complete blocks bounded by public or private streets, with maximum blocks not to exceed four acres in size. The proposed planned unit development is nearly 22 acres, as such this standard applies. Although Moon Mountain bisects the property, effectively creating an approximately 3.3 acre block, the remainder of the parcel is approximately 18.6 acres.

Staff concurs with the applicant's proposed non-compliance to this standard, due to the previously discussed exception to street connectivity standards under EC 9.8320(5) (see evaluation at EC 9.6815).

Site Access and Internal Circulation

(11)(b)2. Parking Drives. This standard requires parking drives for multi-family development with more than 20 units to be designed to not permit through motor-improvements. Although the applicant's statements indicates the parking drives are designed in accordance with this criteria (page 46 of November 26, 2013 revised written statement), as shown on the applicant's site plans, the parking drives, as designed, would clearly permit through motor-vehicle movements. The applicant has not proposed non-compliance with this standard or proposed an adjustment. Staff would not support approval of proposed non-compliance in this case, given the lack of adequate information to fully evaluate the adequacy of screening from surrounding properties and the lack of adequate visual analysis to fully evaluate how the proposed project is reasonably compatible and harmonious with surrounding properties. Furthermore, based on the available information, staff also finds that the expansive parking areas, as designed, are inconsistent with the PUD purpose statements including the promotion of compatible and clustered development. When taken in context with the number of large multi-family buildings, the proposed parking areas do not fulfill those objectives. Furthermore,

staff finds that the parking lots and drive aisles cannot be adequately screened from surrounding properties and are not compatible with surrounding land uses.

Vehicle Parking

(12)(b)1. Maximum Size of Parking Courts and (12)(b)3. Parking Court Separation: These standards require that individual parking courts not exceed 9,000 square feet in size, and that no more than three individual parking courts be connected by an aisle or driveway. The proposed development does not comply with this standard, as several of the parking courts are greater than 9,000 square feet, and more than three courts are connected. The applicant has proposed non-compliance to this standard (see page 47 of November 26, 2013 revised written statement). Staff does not support the applicant's request for proposed non-compliance in this case, for the same reasons as addressed immediately above, under the discussion pertaining to parking drives.

Recycling

With regards to EC 9.5650 Recycling – Small Collection Facility Standards and EC 9.6740 Recycling and Garbage Screening, the applicant's landscape plan (L1.1) identifies one for recycling and garbage in the center of the site. The plans do not provide enough detail to confirm if the facility standards or the screening requirement (6 to 8 foot high fence) are met; however, these can be addressed in greater detail during the building permit process. Staff recommends that the applicant consider providing additional recycling and garbage areas dispersed throughout the development site, similar to the bicycle parking.

Bicycle Parking Space Standards

With regard to EC 9.6105 Bicycle Parking Space Standards, the development exceeds these requirements, subject to stall dimensions and security details being determined during the building permit process. EC 9.6105 requires one long-term bicycle parking space per dwelling unit. Based on the proposal, 162 long-term bicycle parking spaces are required. Short-term bicycle parking is not required of residential development.

The applicant indicates that 168 long term spaces and 84 short term spaces are proposed. The plans show ten bicycle parking areas across the site (See Sheet C3.1 of the November 26, 2013 revised site plans). The plans do not provide enough specificity to determine whether the long-term space security or shelter requirements are met, but those can be addressed in greater detail during the building permit process. The PUD plans show ample room on the development site to accommodate the required bicycle parking. Additional bicycle parking (more than the 162 long-term spaces required) does not have to meet code standards, with regard to dimensions and security specifications. Based on these findings, the bicycle parking space standards of EC 9.6105 will be met.

Motor Vehicle Parking Standards

With regard to EC 9.6410 Motor Vehicle Parking Standards, the applicant's plans show 499 on-site surface parking spaces (including 11 disabled parking spaces) (see Sheet C3.1 of the November 26, 2013 revised site plans). The applicant's written statement and site plans note

that there a total of 525 on-site parking spaces, and that 26 additional parking spaces are proposed in front of and within garages of several buildings. The proposed number of proposed on-site parking spaces exceeds the minimum number of required vehicle parking spaces (one per dwelling unit or 162 in this case). There is no limitation on the maximum number of vehicle parking spaces for residential development.

Residential Sign Standards

Although the applicant's November 26, 2013 revised written statement notes that two signs are proposed, three signs monument signs are identified on the site plans (see Sheet C3.0 of the November 26, 2013 revised site plans); one along Laurel Hill Drive, one at the intersection of Laurel Hill Drive and Moon Mountain and one at the intersection of Moon Mountain Drive and the driveway to the western portion of the site. The applicant provided additional details regarding the signs in the supplemental application materials submitted October 17, 2013 and November 26, 2013.

Regarding the maximum number of signs, EC 9.6650(3)(b) would limit the number of signs (based on street frontages) to two signs for the development. However, in this case staff believes it is appropriate, given the size and configuration of the site and because Moon Mountain Drive bisects the development site, to look at the development in this context of this standard as two separate pieces. Therefore, for sign standards, two street frontages could be applied to each different piece, allowing up to four signs. In this case, staff finds that an allowance for three signs is appropriate. Regarding EC 9.6650(4)(a)1. Maximum Sign Area, the proposed signs meet the requirement for no more than 24 square feet for two or more sign faces.

Outdoor Lighting Standards

These features will be subject to the standards at EC 9.6725 at the time of development.

Conclusion

PUD provisions are designed to provide a high degree of flexibility to allow for compatible development and preservation of natural resources. A PUD application could show that allowing standards to be varied, adjusted or "modified" achieves a better design in the context of the site and area specific characteristics. In this case, not enough evidence has been provided showing how all of the areas of proposed non-compliance still achieve the purpose of the PUD. While the applicant is asking for approval to deviate from several standards, it is not clear in this case that the overall proposal is achieving the purpose of the PUD, including compatibility and clustering. In fact, the development does not meet numerous standards, as well as other relevant approval criteria, which are directly related to the purpose statement. As such, staff concludes that the applicant has not met the requirements under subsection (11)(k) above.

In the event the applicant is able to provide evidence to satisfactorily address the relevant approval criteria, and the Hearings Official grants tentative PUD approval, then the following condition of approval is warranted:

- The final PUD site plans shall note that compliance with the following development standards will be determined more precisely at the time of building permit review:
 - Landscape Standards beginning in EC 9.6200
 - Garbage Screening contained in EC 9.6740
 - Recycling: Small Collection Facility Standards contained in EC 9.5650
 - Bicycle Parking Standards contained in EC 9.6105
 - Outdoor Lighting Standards contained in EC 9.6725

Opponents' Arguments

Of the standards set forth in EC 9.8320(11) opponents argue that EC 9.8320(11)(b) is not complied with because EC 9.6505(4), which regulates sidewalks, is not met. They also argue that EC 9.8320(11)(d) is not complied with because the applicant's Geological and Geotechnical Analysis, as required by EC 9.6710, does not adequately assess the risk of slope failure.

Applicant's Response

If the applicant responded directly to the staff's findings for EC 9.8320(11), the Hearings Official cannot find that narrative. The record shows that the applicant is willing to provide the infrastructure associated with the site plan as prescribed by the City. The applicant provided responsive written testimony on the risk of slope failure as noted above in the findings for EC 9.8320(6).

Hearings Official Conclusions

The Hearings Official is not directed to argument or evidence by the applicant that would necessitate deviating from the staff findings. The staff findings for EC 9.8320(11) are adopted by this reference with the exception of the findings of compliance with EC 9.6710. The findings for EC 9.8320(6) demonstrate that there is insufficient information to determine that the applicant's Geological and Geotechnical Analysis meets the standards of EC 9.6710 as to slope stability. Otherwise all parties appear to be satisfied with the staff's findings, and the Hearings Official adopts those findings by reference.

As to the opponent's argument regarding sidewalks, the Hearings Official sympathizes with the notion that building sidewalks to nowhere, which appears to be the case at the northeast corner of the property adjacent to Laurel Hill Drive, particularly where doing so would needlessly sacrifice mature trees, is a bad idea. However, the standard opponents cite, EC 9.6505(4) does not contain a provision that allows the Hearings Official to forbid that outcome. EC 9.6505(4) simply requires that sidewalks be built to City standards. There is no authority granted there or in EC 9.8320(11) to require the applicant to reroute a required sidewalk. EC 9.8320(11) is met with the exception of EC 9.8320(11)(d and k) as discussed above.

EC 9.8320(12): The proposed development shall have minimal off-site impacts, including

impacts such as traffic, noise, stormwater runoff and environmental quality.

Staff Findings

As addressed elsewhere in this report, a stormwater drainage analysis, geotechnical report, and a traffic impact analysis have been submitted as part of the application and reviewed for compliance with applicable criteria and related standards. Those materials and related issues are also relevant under this criterion.

The development will have minimal off-site traffic impacts per the findings provided previously at criterion (5)(c) regarding traffic generation and pursuant to the street standards beginning at EC 9.6805 regarding the street system. Off-site impacts of stormwater runoff are addressed as part of the applicant's proposed stormwater collection, conveyance, and treatment system, as discussed previously at criterion (11)(j). Slope stability is addressed at (11)(d). A concurrent request for standards review, which addresses impacts to the Goal 5 resource, is addressed below.

Regarding noise, as the proposal is for a residential development, there do not appear to be any potential noise sources associated with the proposal that are not also typical for other residential developments, with the exception of the shared outdoor pool. Testimony from the Laurel Hill Valley Citizens raised the concern that the addition of over 600 students in this area would also have impacts related to noise (such as student party behavior), especially if no oversight is provided. As noted in the applicant's November 26, 2013 revised written statement, the applicant proposes to have an on-site manager available 24 hours a day. The applicant provided the following proposed condition of approval to address this concern:

- The applicant shall adopt "Community Rules and Regulations" to apply to all residents and their guests. The Community Rules and Regulations may be amended from time to time as deemed necessary by the property owner provided, however, that the property owner shall not eliminate Community Rules and Regulations in their entirety nor substantially lessen the restrictions contained in the Community Rules and Regulations without the approval of the City of Eugene. The property owner shall retain, or cause a third-party property management company to retain, on-site property management staff to enforce the Community Rules and Regulations. At least one member of the property management staff shall reside at the property. The outdoor pool shall be closed from the hours of 9:30pm to 9:00am, except in the case of a special event planned and supervised by the property management staff. In addition to compliance with any local noise ordinance or regulation, residents and residents' guests shall not make or permit to be made any loud, disturbing, or objectionable noises. Musical instruments, radios, phonographs, television sets, amplifiers and other instruments or devices may not be used or played in a manner as may constitute a nuisance or disturbs other residents or neighbors.

Based on the above findings, available evidence and the proposed condition, this criterion is met.

Opponents' Arguments

The opponents raise a number of alleged off-site impacts associated with EC 9.8320(12). HE-13. Of these, there are two asserted negative impacts that are not addressed elsewhere in these findings: 1) noise impacts from the PUD residents, particularly associated with the Club House, and 2) the increase in street lamps and the asserted increase in lumens in the area, which the opponents argue constitutes unacceptable light pollution.

Applicant's Response

In at least two of the applicant's post hearing submissions, the applicant address the noise issue by stating that the opponents are stereotyping college students as loud, partying, obnoxious neighbors which will create a nuisance in the neighborhood. The applicant also proposes to have an on-site manager that will be tasked with maintaining order and the peace in the PUD. As to the impact of street lamps and the lighting required for the buildings, at the public hearing Jon Williams noted the standard measure of street lighting is foot candles which measures the amount of light that reaches the ground. He also testified that the applicant seeks to minimize that light output as much as is feasible.

Hearings Official Conclusions

In the recent decision PDT 13-1 (Oakleigh) the Hearings Official concluded that the reference to "minimal off-site impacts" does not mean that a PUD must have no impacts. I also found that EC 9.8320(12) does not extend to any and all impacts real or imagined, but is limited to the potential impacts listed as well as any reasonably related impacts that are implicated by the PUD approval criteria in EC 9.8320.

Here, the concern over appropriate light levels appears to be implicated by EC 9.8320(11) and related development standards. However, the opponents' lumen calculations are not the correct measure for determining light pollution impacts. Outdoor street and building lighting is regulated by EC 9.6725 which sets standards for such lighting. Here, there is no reliable evidence in the record showing that those standards will not be met.

As to the potential for noise and nuisance caused by college students, the Hearings Official notes that opponents have placed in the record several documents cataloging the alleged misbehavior of students populating other Landmark developments. The Hearings Official has no reason to doubt the accuracy of that information. However, I find that it is inappropriate and not legally defensible to assume that the future residents of the proposed PUD will necessarily create noise impacts in the development which will, with certainty, violate other City ordinances. There is no evidentiary basis for presuming that college age renters at the proposed PUD will violate the City's noise ordinance or otherwise disturb the peace. Making such an assumption would require a related assumption that the residents will simply by their nature be certain violate municipal ordinances. That is an assumption that is prohibited in all

other areas of law, and the Hearings Official declines to presume such an outcome here. If such ordinance violations were to occur in the future, other mechanisms are available as a remedy – such as code enforcement. The mere assertion that noise and poor behavior is bound to happen is not sufficient evidence upon which to deny this application. This criterion is met.

EC 9.8320(13): The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.

Staff Findings

Adjacent and nearby land uses include single-family and multi-family housing, the Northwest Youth Corps Campus, and an electrical substation and Interstate 5.

Staff notes that the use of the site for multi-family housing is not inherently incompatible with adjacent and nearby land uses. The site itself is somewhat compromised given the overhead electric facilities that cross the site in two places, the adjacent EWEB electric substation and the proximity and associated noise of Interstate 5, which is further demonstrated in the applicant's Compatibility Analysis. In addition, the surrounding area is characterized by a mix of land uses. However, as further described elsewhere in this report and below, there is not enough evidence to conclude that the design of this particular development proposal, especially in terms of bulk, scale, height and amount of paving, is reasonably compatible with the surrounding development.

As previously addressed above at EC 9.8320(2) regarding the South Hills Study policies, at EC 9.8320(3) regarding adequate screening and EC 9.8320(11)(k) regarding compliance with applicable development standards, the majority of the buildings are proposed to be higher than allowed in the R-1 zone, and several are proposed to be wider than typical. Additionally, the proposal also includes expansive areas of paving between the rows of buildings.

The applicant has not provided evidence to satisfactorily demonstrate that the buildings and paving areas are adequately screened from surrounding properties based on the height, location and massing of the buildings and intensity of the development, nor has the applicant provided adequate visual analysis to fully evaluate how the proposed project is reasonably compatible and harmonious with surrounding properties. Furthermore, based on available information provided by the applicant, staff also finds that the intensity of the proposed development, including larger building masses, additional height and the expansive parking areas cannot be adequately screened from surrounding properties.

Staff finds that that the project, as designed, is not compatible with surrounding development. Specifically, staff finds that the scale, mass and overall number of large multi-family buildings, coupled with expansive parking areas result in a level and intensity of development that is not compatible with its surroundings.

Based on available information, staff cannot conclude that the proposed development is

compatible and harmonious with adjacent and nearby land uses.

Opponents Arguments

Opponents raise numerous issues regarding the compatibility of the proposal with adjacent and nearby uses. Many of those are the same issues identified in the staff findings. In addition, opponents assert that the proposal is incompatible because: 1) the PUD will invite a high proportion of renters to a predominantly owner occupies area, and 2) the PUD lacks diversity of housing types because the units are built to look like multifamily dwellings and single family dwellings when they all consist of single bedrooms for rent.

Applicant's Response

The applicant provided abundant argument and evidence in response to this criterion and those related to it such as EC 9.8320(2 and 3). The applicant's position is perhaps best summed up by Mr. Reeder's eloquent explanation of the applicant's efforts to make the PUD "reasonably compatible" through screening and site design discussed in his January 17, 2014 letter. Mr. Reeder argues that the compatibility standard is not a requirement for absolute and complete harmony with nearby residents, but that it must be balanced with the flexibility allowed in the design of PUDs. The record also shows that the applicant has committed to placing vegetated buffers at multiple locations to screen the proposal from adjacent land owners.

Hearing Official Conclusions

The Hearings Official generally concurs with staff's findings for EC 9.8320(13) and adopts those findings by this reference – consistent with the findings set forth below.

As an initial matter, the Hearings Official disagrees with the opponent's arguments set forth above. The argument against renters is akin to their argument against college student as discussed in the findings EC 9.8320(12). The argument is also a variation of a complaint often heard in conditional use and PUD reviews, that approving the proposal would invite "strangers" into the neighborhood. As the Hearings Official explained in the decision for PDT 13-1 (Oakleigh) fear of strangers entering the neighborhood bringing their real or imagined ills is not relevant to any applicable PUD approval criterion.

The Hearings Official agrees with Mr. Reeder that the concept "reasonably compatible" is not without sideboards. Consistent with the decision in PDT 13-1, the reasonable scope of issues that can be considered in connection with compatibility are those represented by the sixteen approval criteria in EC 9.8320 as they are triggered by facts of a given application. It is not a reasonable interpretation of EC 9.8320(13) to view it as a catch-all category to determine compatibility based on any and all imagined impacts that a PUD might bring. Reaching such a conclusion would allow EC 9.8320(13) to "trump" all the other approval criteria for reasons that might not be related to implementing the Metro Plan or the City's zoning and

development ordinances. That interpretation would render the other fifteen criterion in EC 9.8320 meaningless which is an impermissible result under ORS 174.010-020.

In PDT 13-1 the Hearings Official determined that all the PUD criteria other than EC 9.8320(13) had been met, and therefore, the proposed PUD was reasonably compatible with adjacent and nearby uses. This applicant record presents the inverse of that conclusion. Here, the evidence and argument shows that several criteria that reasonably relate to compatibility, EC 9.8320(2, 3, 4(b), 6 and 11) have not been met. The findings for those criteria are incorporated here by reference. In particular the visual impacts connected with the height, bulk and scale for the proposed design are not reasonably compatible and harmonious with nearby uses. Importantly, the record shows that negative impacts identified in the findings for EC 9.8320(2, 3, 4(b), 6 and 11) cannot be mitigated by providing simply by providing larger areas of vegetated screening on-site. For these reasons, EC 9.8320(13) is not met.

EC 9.8320(14): If the tentative PUD application proposes a land division, nothing in the approval of the tentative application exempts future land divisions from compliance with state or local surveying requirements.

This criterion does not apply because the development does not include a future land division.

EC 9.8320(15): If the proposed PUD is located within a special area zone, the applicant shall demonstrate that the proposal is consistent with the purpose(s) of the special area zone.

The subject property is not located within a special area zone. As such, this criterion is not applicable.

Standards Review Evaluation (SDR 13-1)

Staff Findings and Hearings Official Conclusions

Staff made the findings set forth below with respect to the applicable Standards Review criteria associated with the proposal. The applicant did not raise any objections to the findings and recommended conditions at the public hearing, and the Hearings Official is not aware of any document in the record where the applicant objects to these findings.

The opponents of the application raise arguments with respect to several criteria that are alleged to be applicable development criteria. HE 13. Those criteria include: 1) the purpose statements for Multiple Family residences at EC 9.5500, building height and mass criteria at EC 9.5500(3 and 6), and driveway and vehicle parking standards at EC 9.5500(11 and 12). However, none of these standards are applicable to PUD developments in the R-1 zone. EC 9.5000 explains the purpose and applicability of the Special Development Standards for certain uses. Those standards only apply where the use table for the applicable zone (here R-1) indicates a proposal will be subject to the special development standards. The Residential Zone Land Uses and Permit Requirements Table at EC 9.2740 indicates that PUD proposals in

the R-1 zone are not subject to EC 9.5000. The opponents are mistaken.

The Hearings Official adopts the following staff findings by this reference.

A limited range of development, including the construction of streets and private access, can be permitted within protected Goal 5 stream corridors under the Water Resources Conservation (/WR) overlay zone requirements beginning at EC 9.4900. In this case, the proposal requires Standards Review approval, which addresses various setbacks, permitted uses, and related development standards of the /WR overlay zone. The applicant proposes the following within the /WR conservation area:

- A sanitary sewer line connecting to an existing manhole within the /WR conservation area
- A 10 foot wide public bicycle/pedestrian path
- Discharge from stormwater collected from impervious surfaces

As a portion of the sanitary sewer line and bicycle/pedestrian path are proposed on property owned by Eugene Water and Electric Board (EWEB), that property is included in the standards review request (See revised Sheet C2.2, submitted November 26, 2013, as part of the standards review site plans).

The applicant's initial site plan, dated August 7, 2013, shows grading associated with the proposed buildings within the /WR conservation area (Sheet C5.0 Grading), which is a prohibited use in the /WR conservation area per EC 9.4930(4)(f). However, the applicant submitted a revised copy of Sheet C5.0 on October 10, 2013 demonstrating that no grading is proposed to occur within this area. The applicant's revised site plans submitted on November 26, 2013 also demonstrate no grading within this area, although staff notes that the site plans show grading and retaining walls immediately adjacent to the /WR conservation area.

Based on the project description, the proposal is requesting approval of Standards Review under the following subsections of EC 9.4930(3):

(b) Construction of public improvements (including but not limited to streets, bridges, paved bikeways and pedestrian paths, and public utilities) required by this land use code or specified in adopted plans. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (1) through (11).

(e) Construction of new underground utility lines within /WR conservation areas of Category A, B, C, or D streams or Category A, B, or C wetlands. Subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) through (5) and to the following additional standards:

- 1. No reasonable alternative routes exist to provide service to an unserved area or to connect to an existing line.**

2. Routing of new utility lines shall be designed so as to minimize adverse impacts to habitat within the /WR conservation area to the greatest extent practicable.
 3. Excavated areas shall be backfilled to the previous grade with existing native soil used for the uppermost 3 feet of backfill whenever possible and in no case less than the uppermost 2 feet of backfill.
 4. Construction of new utility facilities shall be planned and timed to minimize adverse impacts to wildlife and habitat within a /WR conservation area.
 5. Impacts to plant species listed as threatened or endangered by the Oregon Department of Agriculture or the U.S. Fish and Wildlife Service shall be avoided.
- (h) Discharge of stormwater collected from impervious surfaces into a wetland or stream within the /WR conservation area, if the following standards 1. through 4. are met:
1. No other gravity-based stormwater discharge options are available for the site.
 2. All of the stormwater runoff from the development site that will result from the water quality design storm will be treated by a privately constructed and maintained stormwater management facility prior to discharge. For purposes of this subsection, the term “water quality design storm” means a theoretical storm for estimating the amount of stormwater runoff to be treated, and is different for volume based facilities and flow-through facilities as follows:
 - a. Facilities designed to store and treat a volume of stormwater shall be sized using a water quality design storm of 1.4 inches of rainfall in 24-hours using Soil Conservation Service (SCS now the Natural Resources Conservation Service) methodology.
 - b. Facilities designed to treat a rate of flow draining through them shall be sized using a rainfall intensity of 0.12 inches per hour for facilities off-line from the conveyance system, or 0.21 inches per hour for on-line facilities, and using the rational equation.
 3. The stormwater is treated prior to discharge utilizing one or more of the following stormwater management facilities: eco-roof, stormwater planter, swale, filter, infiltration basin, and manufactured treatment facility.
 4. Design and construction of the stormwater management facility is subject to EC 9.4980 /WR Water Resources Conservation Overlay Zone Development Standards (2) through (5).

Although the applicant indicated that EC 9.4930(3)(i) is applicable to the path rather than (b) above, staff notes that subsection (i) applies to pathways of no more than 6 feet in width within the conservation area for Category A, B, or C streams or Category A wetlands, and no more than 12 feet for bike paths identified in TransPlan. As the proposed path is 10 feet in width, is within a conservation area of a Category D stream and is not identified in TransPlan, subsection (i) does not apply. Public Works notes that (e)1. through 5. are met for the sanitary sewer line and (h)1. through 4. are met for the new proposed discharge points.

The following development standards are applicable to this standards review request:

EC 9.4980(1) Enhancement. Where the /WR conservation area is reduced, or uses are approved within the /WR conservation area, the remaining /WR conservation area shall be enhanced consistent with this subsection and by removing non-native plant species and planting native plant species consistent with subsections (2) and (3) below.

- (a) All refuse, toxic materials and any fill that limits or decreases the capacity of the conservation setback area to filter pollutants from runoff that flows across the conservation setback area shall be removed (not including stormwater collected and discharged from impervious surfaces).
- (b) Where practicable, finished grades shall encourage sheet flow of runoff across conservation setback areas to maximize filtering and infiltration of precipitation and runoff within conservation setback areas (not including stormwater collected and discharged from impervious surfaces).
- (c) On sites where the slope within the conservation setback area exceeds 15 percent, measures (e.g., planting and contouring) shall be taken to slow the flow of runoff to the maximum extent practicable (not including stormwater collected and discharged from impervious surfaces).
- (d) Non-native plants shall be permanently removed to the maximum extent practicable and replaced with native plant species in accordance with subsection (3) below.
- (e) Except as required by EC 9.4980(2)(c), EC 9.4980(3)(d) and EC 9.4980(3)(e), site work to enhance the conservation setback area shall be completed prior to or concurrent with other site development, unless appropriate native plant species are not available within that time frame.

The applicant's written statement notes that because the /WR conservation area is not being reduced, this standard is not applicable. However, this standard also applies to uses that are approved within the /WR conservation area, and thus is applicable to this request.

In regards to subsection (a) of this standard, which requires the removal of refuse, toxic materials, and any fill that limits or decreases the capacity of the conservation area, staff confirms that these conditions do not exist. Regarding the standard at subsection (b) that calls for finished grades to encourage sheet flow of runoff to the conservation area, it appears that finished grades will encourage sheet flow in the conservation area to maximize the filtering of stormwater. Subsection (c) of this standard does not apply because the slopes do not exceed 15 percent. In regards to the removal of non-native plants pursuant to subsection (d) of this standard, the applicant will remove non-native species and plant native ones to the maximum extent practicable. Regarding subsection (e) of this standard, which requires coordination of

site work within the conservation setback area, work within the conservation setback will be completed concurrent with other site development. Based on the available evidence and above findings, the proposed development will comply with the above standard.

EC 9.4980(2) Vegetation Removal. Vegetation removal within the /WR conservation area and within areas removed from the /WR conservation area shall comply with the following standards:

- (a) Vegetation removal shall be limited to:**
 - 1. Plant species that are non-native and invasive;**
 - 2. Dead or dried native plants or grasses only when they constitute an imminent fire hazard;**
 - 3. Living native or non-native vegetation, when its removal is necessary to facilitate or encourage the growth of other native species (e.g., native wet prairie plant species) consistent with adopted plans or policies; or**
 - 4. The minimum area of native vegetation removal necessary to accommodate uses approved in accordance with EC 9.4930(3)(a) through EC 9.4930(3)(k), and uses approved through an adjustment approved in accordance with EC 9.8030(21).**
- (b) Clearing of more than 500 square feet of vegetation must comply with Erosion Prevention regulations for sensitive areas in EC 6.645.**
- (c) Any clearing of vegetation that is not within the footprint of uses approved in accordance with EC 9.4930(3)(a) through EC 9.4930(3)(k), or uses approved through an adjustment approved under EC 9.8030(21), must be followed by replanting in accordance with the requirements of subsection (3) below.**

Consistent with subsection (a), the applicant confirms vegetation removal related to the path will be limited to that identified above. Regarding subsection (b), the applicant notes that vegetation removal will exceed 500 square feet. As such, prior to any ground disturbing activities, the applicant confirms that they will obtain an Erosion Prevention permit. Regarding subsection (c) the applicant indicates that any clearing of vegetation which is not within the footprint of uses approved will be followed by replanting in accordance with subsection (3). Based on the available evidence and above findings, the proposed development will comply with this development standard.

EC 9.4980(3) Planting and Replanting. Planting or replanting with the /WR conservation area shall comply with the following standards:

- (a) Areas of existing bare soil and areas which have been cleared or graded in accordance with subsection EC 9.4980(2) or EC 9.4980(5) shall be planted with native plant species. Except as required in (b) and (c) below, plant species and plant spacing**

used for such plantings shall be appropriate to increasing to the greatest extent practicable the capacity of the conservation setback area to filter pollutants from runoff that flows across the conservation setback area (not including stormwater collected and discharged from impervious surfaces). Where existing native vegetation already serves this function to some extent, additional native plants shall be planted in order to augment native vegetation already existing. Plant species selected for all plantings shall be appropriate to the site given its topography, hydrology, soil, and existing native plant species.

- (b) Planting or replanting within 25 feet of a Category B, C, or D stream within the /WR conservation area shall include native tree or large shrub species and located so as to provide substantial shading of the channel during times of peak solar input.
- (c) Where non-native or damaged trees are removed within 25 feet of a Category B, C, or D stream within the /WR conservation area, they shall be replaced with native tree or large shrub species and located so as to achieve equal or greater shading of the channel during times of peak solar input as the trees removed.
- (d) Replanting of areas cleared of existing vegetation must be completed within 90 days following the removal or clearing, unless otherwise approved by the planning director.
- (e) Plantings shall not adversely affect adjacent protected water resources or existing native vegetation through shading or invasion by plant species introduced into the setback.

The applicant's written statement notes that planting or replanting will be completed in accordance with the above subsections. The applicant did not submit a site plan showing or noting compliance with this standard. As such, to ensure compliance with this standard at the time of development, staff recommends the following condition:

- The final PUD site plans shall demonstrate compliance with EC 9.4980(3) at the time of development.

Based on the above findings and condition, the above standard is met.

EC 9.4980(4) Construction Practices. Construction with the /WR conservation area, and within areas removed from the /WR conservation area shall comply with the following standards:

- (a) For purposes of this subsection, heavy machinery is defined as motorized or mechanized machinery or equipment capable of deliberately or inadvertently damaging vegetation, or damaging

or compacting soil. The following standards shall apply to use of heavy machinery within the /WR conservation area:

1. On sites where soils are susceptible to severe compaction or structural damage when wet or saturated, use of heavy machinery shall be limited to the period between June 15 and September 30, unless otherwise approved by the planning director.
 2. Use of heavy machinery shall be the minimum necessary for the use or activity and shall be restricted to those areas where its use is necessary.
- (b) Petroleum products, chemicals, or other deleterious materials used in the construction process shall not be allowed to enter a stream or wetland that is within a /WR conservation area.

The applicant confirms that all work will occur within the parameters of this standard, namely that the use of heavy machinery will be limited to the period between June 15 and September 30, and that petroleum products, chemicals, or other deleterious materials used in the construction process will be prevented from entering the stream. This standard will be met as part of the Erosion Prevention permit. Based on these findings, the above standard is met.

EC 9.4980(5) Filling, Grading and Excavating. Filling, grading and excavating within the /WR conservation area and within areas removed from the /WR conservation area shall comply with the following standards:

- (a) Filling, grading or excavating of more than 500 square feet must comply with Erosion Prevention regulations for sensitive areas in EC 6.645.
- (b) Grading and excavating conducted as part of restoration or enhancement projects, and bank and channel reconfiguration shall result in topography that resembles landscapes shaped only by natural processes, for example, incorporating the undulations, meanders and slopes found in such landscapes. For purposes of this standard, straight lines and geometric or angular shapes are not acceptable. Channel and stream bank slopes shall not exceed 25 percent at elevations of 500 feet or less.

Regarding subsection (a), this standard will be met as the project will require an Erosion Prevention permit before any ground-disturbing activities occur on the site. Subsection (b) does not apply to the subject request, as the proposal does not include restoration, enhancement or reconfiguration. Based on these findings, the above standard is met.

EC 9.4980(6) Impervious Surfaces. Within the /WR conservation area, construction of new impervious surfaces shall comply with the following standards:

- (a) Impervious surfaces are prohibited within the /WR conservation area unless they are part of a use approved in accordance with EC 9.4930(3).
- (b) Impervious surfaces that are part of a use approved in accordance with EC 9.4930(3) shall be no larger than the minimum necessary for the approved use. For sites with wetlands, impervious surfaces shall be located as far from the boundaries of locally significant wetlands as practicable. For riparian and upland wildlife habitat sites, impervious surfaces shall be located as far from the line of ordinary high water as practicable.
- (c) Durable porous paving treatments or other infiltration devices approved by the planning director or decision-maker shall be used in lieu of standard impervious paving surfaces to increase infiltration of stormwater where practicable. This standard shall apply only to low volume parking areas, foot paths or lightly used access roads, where porous soils and flat topography will facilitate infiltration of runoff. For the purposes of this subsection, gravel surfaces are not acceptable as porous paving or as an infiltration device.

In regards to standard (a), the impervious surface proposed within the conservation area is limited to the proposed path, which is the public improvement use being proposed pursuant to EC 9.4930(3). The ten foot wide path is the minimum width necessary to provide two-way passage of bicyclists and pedestrians. The alignment of the path complies with standard (b) because it is located the maximum distance practicable, while serving its intended purpose and it will be constructed partially within the footprint as the proposed sanitary sewer line. Standard (c) does not apply because the project does not involve parking or other access ways regulated by this standard. Based on these findings, the above standard is met.

EC 9.4980(7) Site Layout. On sites where the /WR conservation area is reduced, high intensity uses within the entire development site, including high volume traffic lanes and truck loading docks, shall be designed and located so that adverse impacts to wetland and riparian habitats within the /WR conservation area are minimized to the greatest extent practicable.

This standard does not apply because the conservation area is not being reduced. Nevertheless, the development does not involve high intensity uses, such as high volume traffic lanes or loading docks.

EC 9.4980(8) Lighting. Within the /WR conservation area, and within areas removed from the /WR conservation area, outdoor area lighting shall be prohibited, except to illuminate walkways, bike paths, pedestrian

gathering areas, and parking areas, where these facilities are intended to be used after dark. Outdoor area lighting is lighting designed to illuminate an outdoor activity area, trail or bicycle path. Where lighting is to be provided within the /WR conservation area and within areas removed from the /WR conservation area, the following standards shall apply...

- (a) Illumination for walkways, pathways or pedestrian gathering area shall be no more than an average maintained luminance of 0.5 foot-candle at grade.
- (b) Output from all other light sources shall be no more than an average maintained luminance of 0.9 foot-candle at grade.
- (c) All lighting fixtures shall be designed to direct light downward to areas intended for human use after dark, and shall be shielded such that light shining toward /WR conservation areas is minimized to the maximum extent practicable.

The proposal includes lighting as necessary to illuminate the bicycle/pedestrian path. According to the applicant, the lighting will be designed in accordance with this standard. Based on these findings, the above standard is met.

EC 9.4980(9) Trails. Within the /WR conservation area, trails shall be constructed of gravel, wood chips or other pervious material, unless otherwise approved by the city manager or decision-maker. Trail construction shall involve the least removal of native vegetation practicable for the area and the minimum amount of fill or excavation practicable.

This standard is not applicable as the proposed project does not include a trail as described.

EC 9.4980(10) Stream and Channel Crossings. Bridges or other structures that cross streams or wetlands within the /WR conservation area, or areas removed from the /WR conservation area shall be constructed so that water flow, vegetation growth and movement of aquatic animals and water dependent wildlife are impeded to the least extent practicable. To meet this standard, bridges and crossings shall include, but are not limited to, applicable items from the following list:

- (a) Bridges across Category A or Category B streams as identified in the Goal 5 Water Resources Conservation Plan shall, where practicable, be designed to avoid channel constriction when flows reach the top of high bank. Where practicable, bridges shall span a distance 1.2 times the width of the stream channel from top of high bank to top of high bank to help prevent scouring within the structure or at the outlet during less frequent floods.
- (b) Crossings over Category A or Category B streams as identified in the Goal 5 Water Resources Conservation Plan shall utilize bridges or

natural substrate culverts where possible. Where practicable, the lower lip of any natural substrate culvert shall be embedded at least 1 foot for box culverts and pipe arches, and at least 25% of the pipe diameter for pipe culverts. The substrate within the structure shall match the composition of the substrate in the natural stream channel at the time of construction. The substrate shall either resist displacement during flood events or the structure shall be designed to maintain an appropriate bottom through natural bed load transport.

- (c) Bridges and culverts on Category A or Category B streams as identified in the Goal 5 Water Resources Conservation Plan shall be constructed so that the “openness ratio” of the structure is equal to or greater than 0.25. The “openness ratio” is the cross-sectional area of the passage area under or within the structure divided by the length of the stream segment it crosses over. For a box culvert, the openness ratio shall be (height x width)/length.
- (d) Culverts shall not substantially increase or decrease water depth or flow rate conditions upstream or downstream from the culvert.
- (e) The lower lip of all culverts shall meet the stream or channel bed at or below grade.
- (f) Culverts shall be the minimum length practicable, and fill on top of the culvert shall have the minimum footprint practicable.

Subsections (a), (b), and (c) of this standard are specific to Category A or Category B streams and do not apply to the subject channel, which is identified as Category D. Nevertheless, the applicant’s proposal meets the intent of these subsections because the crossing will utilize a bridge, rather than a culvert. Subsections (d), (e), and (f) of this standard do not apply because the project does not involve a culvert. To the extent the above standard applies, the proposed crossing meets this standard.

EC 9.4980(11) Interpretive Facilities. Within the /WR conservation area, boardwalks, viewing platforms, interpretive information kiosks, trail and interpretive signs shall be constructed in a manner that involves the least removal of native vegetation practicable. Signs shall be no more than 5 feet tall, and 16 square feet per face in surface area, except for signs intended to be read from moving automobiles, such as site entrance signs, which shall be no more than 8 feet tall and 32 square feet per face in surface area. Kiosks shall be no more than 8 feet tall and 16 square feet per face in surface area. The number of signs shall be the minimum necessary to accomplish project objectives.

This standard is not applicable as the proposed project does not include any interpretive facilities.

To ensure that all of the above applicable standards are complied with at the time of development, the following conditions of approval are warranted:

- The final PUD site plans shall clearly identify the /WR conservation area, including the resource boundary and the required setback, and shall include the following notes:
 - Compliance with the relevant /WR standards EC 9.4980 shall be demonstrated at the time of development.
 - No grading, filling or other construction activities, except as necessary to construct the path and utilities as proposed in the November 26, 2013 revised application materials, shall occur within the /WR conservation area.
 - Protective fencing for the /WR conservation area shall be installed by the applicant and inspected and approved by the City prior to beginning any construction related activities. All protective fencing shall remain in place until completion of all construction activities. Relocation and removal shall occur only with approval by the City.

Based on the above findings, available evidence and conditions, the above standards are met. However, because the applicant has not demonstrated compliance with all criteria for the concurrent tentative planned unit development to allow for the proposed multi-family development, the proposed standards review cannot be approved.

Decision

Based upon the available evidence and preceding findings, the Hearings Official DENIES the applicant's request for a Planned Unit Development approval and Standards Review approval, and APPROVES the applicant's request for a Traffic Impact Analysis approval.

Dated this 7th day of February, 2014.

Mailed this 7th day of February, 2014.



Kenneth D. Helm
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS

PRELIMINARY ISSUES: EVIDENTIARY

EC 9.7655 Filing Appeal of Hearings Official or Historic Review Board Initial Decision provides at subsection (2) that “No new evidence pertaining to appeal issues shall be accepted.” The following issues need to be decided by the Planning Commission at the outset of deliberations to determine what may be considered by the Planning Commission in its decision-making process.

Potential New Evidence Identified by Staff

A summary of the potential new evidence is provided below. Staff believes that all of following constitute new evidence that is not in the record and was not considered by the Hearings Official in rendering his decision. As such, staff recommends that the Planning Commission reject all of these items.

1. Oral testimony at the public hearing and written testimony submitted the day of the April 1, 2014 public hearing from Benjamin Hansen related to drunken driving statistics.
2. Oral testimony from Charlie Frazer at the public hearing and written testimony from Laurel Hill Valley Citizens submitted at the April 1, 2014 hearing related to the specific growth rate of trees.
3. Oral testimony at the public hearing and a PowerPoint slide with a photo (shown at the hearing and provided for the record) from Gunnar Schlieder pertaining to a nearby development.
4. Written testimony containing photos of the surrounding area submitted on April 8, 2014 by Andreas and Julie Rossberg. [This testimony was not forwarded to the Planning Commission, as the photos are clearly not already included in the record.]

Potential New Evidence Identified by Others

Gunnar Schlieder submitted an email on April 8, 2014 challenging statements made by the appellant’s representative, Micheal Reeder during the Hearings Official proceedings, as well as during the appeal proceedings, related to the visibility of the site, and that such information constitutes new evidence, as it was submitted during a record period when new evidence was not permitted.

This information was first submitted during the Hearings Official’s proceedings and was not rejected by the Hearings Official. As such, staff do not concur that this constitutes new evidence.



Memorandum

Date: April 17, 2014
 To: Eugene Planning Commission
 From: Alissa Hansen, Planning Division
 Subject: Summary of Appeal Issues

Seven appeal issues were raised by the appellant, which are provided below (in **bold**) and summarized with relevant excerpts from the Hearings Official's decision, the appellant's statement of appeal, and references to other related evidence or testimony in the record. To assist the Planning Commission in determining whether to affirm, reverse, or modify the decision, staff has provided relevant excerpts of the Hearings Official's decision, followed by a synopsis of the applicant's and opponent's argument. References to more detailed arguments are also provided to assist the Planning Commission in deciding whether to affirm, reverse or modify the decision.

Assignment of Error #1 – Laurel Hill Plan Policy

The HO erred by finding that the Laurel Hill Plan Policy 1C constituted mandatory approval criteria. (HO Decision, Pg 15).

The full text of the policy is provided below, in *italics*:

Land Use and Future Urban Design

Policy 1: Approval of Valley Development will take into consideration:

- a. **Density.** The appropriate density for residential development shall be determined based on 1) the provision of the Metropolitan Area General Plan [Metro Plan] calling for an overall density range of one to ten units per acre; and 2) provisions of the South Hills Study, including those limiting density to five units per acre for sites above 500 feet in elevation.*
- b. **Size.** Large apartment complexes (over thirty-two units) are objectionable because their dominance would alter entirely the character of the Valley. Approval of apartment complexes larger than 32 units will depend upon the feasibility of providing adequate urban services, streets, schools, and transportation.*
- c. **Dispersal.** Planned Unit Developments composed primarily of multiple family dwelling units shall be separated and dispersed and not abutting.*

In regards to this policy, and specifically policy 1.c, the Hearings Official found:

As an initial matter, the Hearings Official disagrees generally that all the policies in the LHP must be considered non-mandatory. Although the LUBA decisions in *Northgreen Property LLC v. City of Eugene*, and *Botham v. City of Eugene*, cited by the applicant, are directed at similar language in the Willakenzie Area Plan, there is another LUBA holding that is directly on point. In *McGowen v. City of Eugene*, __Or LUBA __ (LUBA No. 92-187, February 18, 1993), LUBA held that refinement plan provisions (the South Hills Study was the subject refinement plan) that require the City to consider various policies were mandatory approval criteria so long as the text of those provisions did not contain qualifying language such as “encourage.” The *Bothman* holding quoted by the applicant in PT-11 [January 10, 2014 letter from Micheal Reeder RE: Landmark properties post hearing response letter] is consistent with LUBA’s prior holding in *McGowan*.

The mandatory approval criteria for the South Hills Study (“SHS”) are discussed below. What the *McGowan* decision shows is that the text of LHP Policy 1.b and 1.c are similar to the SHS criteria that LUBA found to be mandatory approval criteria.

Policy 1.c

The text of Policy 1.c is mandatory stating that in PUDs “multiple dwelling units shall be separated and dispersed and not abutting.” The presence of the word “shall” indicates a mandatory criterion consistent with *McGowan* case cited above. In addition, the word “and” between the terms “separated” “dispersed” and “not abutting” represents three parameters that cannot be collapsed into a single adjacency standard.

The Hearings Official disagrees with the arguments on this policy set forth by the applicant. Policy 1.c by its own terms applies to “multiple dwelling units” which is different than the EC 9.0500 definition of “multiple family” dwellings as argued by the applicant. “Multiple dwelling units” as used in Policy 1.c reasonably includes all the plexs as well as the large (28 dwelling unit) buildings proposed. The proposal is predominated by those multiple dwelling unit buildings as only 10 units will be single family.

While staff and the applicant disagree on whether the Oak Creek Townhomes are technically adjacent, this is of little matter because by any definition the proposal is not “separated” in any meaningful way from the Oak Creek Townhomes. Neither would the proposal allow the two apartment complexes to be “dispersed” in the Laurel Hill area. This proposal places the only two multiple dwelling apartment complexes in the Laurel Hill area in the immediate vicinity of each other. Thus, the proposal is inconsistent with the plain meaning of Policy 1.c which is to separate and disperse those types of residential uses. LHP Policy 1.c is not met. (See pages 14-15 of the Hearings Official Decision).

The appellant asserts that Policy 1c is not a mandatory approval criterion and, therefore, cannot be the basis for denial. The appellant's position is that, based on several relevant LUBA decisions, the text and context of the applicable provision simply requires the reviewing authority to "take into consideration" (as stated at the beginning of Policy 1) this policy in light of the proposed development. According to the appellant, the Hearing Official erred by not distinguishing or addressing how "take into consideration" is any less qualifying than "encourage." Furthermore, according to the appellant, when the location of the subject property and the proposed design features and elements are taken into consideration, in the context of this policy, these factors mitigate against dispersing this PUD *vis a vis* the Oak Creek townhomes. For more detail, see pages 2-5 of the Appeal Statement, page 3 of the February 28, 2014 supplemental appeal statement, pages 2-8 of the April 15, 2014 final argument letter from Micheal Reeder, as well as pages 8-13 of the January 10, 2014 post-hearing response letter from Micheal Reeder.

On behalf of the Laurel Hill Valley Citizens, Sean Malone provided oral and written testimony at the appeal hearing supporting the Hearings Official's reliance on the plain reading of the policy, and the conclusion that it is mandatory. According to Mr. Malone, the Hearings Official also correctly interpreted the relevant case law, and made the correct conclusion in determining that the proposal does not comply with this policy. For further detail, see the April 1, 2014 and April 8, 2014 letters submitted by Sean Malone. Other relevant testimony includes the December 18, 2013 and March 28, 2014 email letters from Peter Livingston and the January 10, 2014 letter from Jan Wostman.

Staff notes that the City Attorney will be available during Planning Commission deliberations to provide advice regarding the legal aspects of this policy.

The Planning Commission has the following options with regard to this appeal issue:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official's findings that the policy is mandatory approval criteria, but upon consideration of the policy, find that the policy is not met
- Reverse the Hearings Official's findings that the policy is mandatory approval criteria and upon consideration of the policy, find that the policy is met

Assignment of Error #2 – South Hills Study Policies

The HO erred by finding that the application did not comply with those provisions of the South Hills Study set forth in the sub-assignments of error below. (HO Decision, Pg 23-26).

Sub-assignment of error #2A: Contrary to the HO Decision, the application complies with EC 9.9630(3)(e) which provides, "[t]hat developments be reviewed in terms of scale, bulk and height to insure that development blends with rather than dominates the natural characteristics of the south hills area." (HO Decision, Pg 24) (Emphasis added)

Sub-assignment of error #2B: Contrary to the HO Decision, the application complies with EC 9.9630(3)(f) which provides, "[t]hat all proposed road locations be reviewed to insure minimum grade disturbance and minimum cut-and-fill activity, particularly in those areas most visible due to slope, topographic or other conditions." (HO Decision, Pg 24-25)

Sub-assignment of error #2C: Contrary to the HO Decision, the application complies with EC 9.9630(3)(g) which provides, “[t]hat planned unit development review shall be based upon recognition of both public and private interests. In areas of significant conflict, which could be resolved through the use of an alternative development plan, primacy shall be given to the public interest in any determinations.” (HO Decision, Pg 25)

Sub-assignment of error #2D: Contrary to the HO Decision, the application complies with EC 9.9630(3)(i) which provides, “[t]hat all developments (planned unit developments or subdivisions) be reviewed to ensure maximum preservation of existing vegetation.” (HO Decision, Pg 25-26)

For clarification, it is noted that although the appeal statement includes references to the Eugene Code for each of the policies, for the purposes of EC 9.8320(2), the South Hills Study policies apply directly (rather than the adopted plan policies in the code, which are only applicable to subdivisions, partitions, and site reviews). The Hearings Official’s decision refers to each policy by a number and provides the corresponding code citation. The full text of each policy is provided below.

Regarding **sub-assignment of error #2A**, the applicable policy states:

That developments be reviewed in terms of scale, bulk and height to ensure that development blends with rather than dominates the natural characteristics of the south hills area.

In regards to this policy, the Hearings Official found:

So, with respect to Policy DII.6, the Hearings Official finds that the most compelling evidence on visual impacts is both the applicant’s renderings of the PUD from a location on Verndenhill Drive, and the opponents’ photo montage of the same perspective. Although the applicant’s architect submitted criticisms of the opponents’ photomontage, the critique represents minor disagreements about the perceived height of some buildings and their correct aspect. However, the Hearings Official does not agree that this evidence so undermines the opponents’ rendering as to make it unreliable. To the contrary, the applicant’s architectural perspectives as shown at the hearing and included in the applicant’s compatibility analysis, and the opponents’ photo montage are more similar than different. They both show that the finished PUD will be clearly visible and will likely present a nearly unbroken continuum of apartment buildings that extend far up the slope of the subject property. And, while some intervening trees may obscure part of the PUD during the spring and summer seasons, the Hearings Official is persuaded that for perhaps up to ½ the year even more of the PUD will be visible through the deciduous trees.

In this I agree with the staff findings above and the conclusions set forth in staff’s January 10, 2014 memorandum, and adopt those findings by this reference. Those findings represent not only conclusions about the evidence submitted, but also professional opinion based on her training as a planner. LUBA has often repeated that staff conclusions set forth in a staff report constitutes substantial evidence itself. *Doty v. Skrepetos*,__Or LUBA__(LUBA No. 2002-024,

September 17, 2002). Although the applicant attempts to step through a variety of locations in the “surrounding area” that will have limited or partially screened views of the PUD, that analysis is based on the assumption that only a few of the buildings can be seen Verdehill Drive location. See Reeder, January 17, 2014 letter. However, even that one vantage point is sufficient to conclude that for the purposes of Policy DII.6, the proposal’s scale, bulk and height will “dominate” rather than “blend” with the natural characteristics of the south hills area. This policy of the SHS is not met. (See pages 10-15 of the Hearings Official Decision and the staff memo dated January 10, 2014)

The appellant asserts that the evidence in the record shows that the proposed development does not dominate the “natural characteristics” of the south hills area, which according to the appellant, is the tree line that runs along the crest of Laurel Ridge Hill. According to the appellant, the artist’s renderings demonstrate that the view of the tree line is unobstructed as a result of the proposed development, and that the development cannot be seen by the vast majority of homes within Laurel Hill Valley. The appellant refers to numerous items in the record to support this appeal issue. For more detail, see pages 5-7 of the Appeal Statement, page 3 of the supplemental appeal statement, the January 9, 2014 letter from Randy Nishimura (attached as exhibit to the January 10, 2014 post hearing response letter from Micheal Reeder, the January 17, 2014 letter from Micheal Reeder, the December 18, 2013 letter and information from Joshua Cohen of Fat Pencil Studio, the December 18, 2013 letter from Risden McElroy, and the December 11, 2013 Supplemental Compatibility Analysis of Surrounding Area Analysis submitted by the appellant. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents agree with the Hearings Official’s decision, and challenge the appellant’s assertion that the Verdehill Drive vantage represents the worst case scenario view of the site; the accuracy of appellant’s artist’s rendering of the site from Verdehill Drive; the appellant’s assertion regarding the reliability of the photomontage submitted by Gunnar Schlieder; and the adequacy of the proposed vegetative buffers. For more detail, see pages 1-7 of the Laurel Hill Valley Citizen’s written materials submitted at the April 1, 2014 appeal hearing and pages 8, 9 and 12 of their December 18, 2013 written submittal.

Regarding **sub-assignment of error #2B**, the applicable policy states:

That all proposed road locations be reviewed to ensure minimum grade disturbance and minimum cut-and-fill activity, particularly in those areas most visible due to slope, topographic or other conditions.

The Hearings Official found that the proposed “drive aisles” in all ways functions as roads both within and through the subject property, and concluded that they will have the same impact on the landscape as “roads.” Accordingly, the Hearing Official applied this policy to the drive aisles and found that even understanding the trade-offs inherent in providing off-street parking, it is difficult to conclude that the proposed site design and grading plan constitute “minimum cut-and-fill activity.” For more detail, see pages 24-25 of the Hearings Official’s Decision.

The appellant counters that the Hearings Official erred when he found that the drive aisles constitute roads for the purposes of this policy, as the Hearings Official failed to cite any language in the South Hills Study that supports this proposition, nor does the policy language suggest that a drive aisle be treated as a road. According to the appellant, the policy is not applicable to drive aisles.

The appellant further asserts that even if drive aisles are to be considered roads in the context of the policy, the Hearings Official erred in his conclusion that at least 70 percent of the property will be cut and filled to accommodate vehicles, when the appellant's paving analysis submitted December 18, 2013 shows that total on-site paving, including drive aisles and onsite parking, constitutes less than 16 percent of the total PUD. Accordingly, the Hearing Official decision was clouded by the misinformation. The appellant also asserts that Hearing Official erred by concluding that the policy applies whether the disturbance is visible from outside the PUD or not. For more detail, see pages 7-9 of the Appeal Statement, pages 3-4 of the supplemental appeal statement, and the applicant's paving analysis ("Comparison of Pavement and Parking with Surrounding Area") submitted December 18, 2013. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents concur with the Hearings Official's conclusions. Specifically, they agree with the finding that the proposed drive aisles will function as roads, as they allow for through motor vehicle movement from lower Laurel Hill Drive to Moon Mountain Drive. The opponents also state that the percentage of area paved does not correlate to the extent of grading performed on a hillside, and because the drive aisles are proposed to be installed essentially flat (on a sloped site), extensive grading will occur. For more detail, see pages 7-9 of the Laurel Hill Valley Citizen's written materials submitted at the April 1, 2014 appeal hearing, and the January 10, 2014 letter from Charlie Frazer and page 9 of their December 18, 2013 written materials.

Staff notes that the relevant multi-family development standard regarding site access and internal circulation, at EC 9.5500(11)(b), states that driveways and parking drives are private roadways for projects or portions of projects not served by streets. In this case, the proposed drive aisles are composed of parking driveways, which are described in this standard as driveways lined with head-in parking spaces along a significant portion of their length. For more detail, see page 46 of the applicant's November 26, 2013 written statement for the text of the relevant multi-family standard and the site plan attached to the AIS.

Regarding **sub-assignment of error #2C**, the applicable policy states:

That planned unit development review shall be based upon recognition of both public and private interests. In areas of significant conflict (e.g., locating development in a highly visible area as opposed to a less visible area or in an area of significant vegetation as opposed to a relatively open one) which could be resolved through the use of an alternative development plan, primacy shall be given to the public interest in any determinations.

In regards to this policy, the Hearings Official found that:

For the same reasons that the proposal does not meet Policy DII.7, the application does not comply with Policy DII.8. Although the applicant states that the public interest is served because

no tax credits or incentives are sought, and because the project provides “needed housing” those considerations are not relevant to Policy DII.8. The provision is focused on resolving conflicts between proposals for locating PUDs in “highly visible” areas or in areas of significant vegetation. If the project will be highly visible, which this proposal will be, consistent with the findings above, an alternative development plan should be sought in order to give “primacy to the public interest.” As explained above in the findings for EC 9.8320(1) the applicant has opted into the subjective and discretionary PUD criteria rather than pursuing the more objective “needed housing” PUD criteria at EC 9.8325. Similarly, the applicant has not pursued development of the subject property through an as-of-right development in the R-1 zone. In addition, the applicant has decided on a self-imposed minimum number of dwelling units of 606 in order to satisfy the applicant’s desired rate of return on investment over time. That is the applicant’s prerogative. However, the Hearings Official has declined to engage in a theoretical comparison of worst case scenarios under either the “need housing” option or full residential density verses the current PUD design because the exercise would be just that – theoretical, and unsubstantiated by any evidence in the record. The text of Policy DII.8 strongly suggests that highly visible PUDs are not in the public interest in the SHS area. This SHS policy is not met. (See page 24 of the Hearings Official Decision).

The appellant asserts that that Hearings Official erred in concluding that the PUD is “highly visible” so as to create an area of significant conflict. According to the appellant (and as discussed in greater detail under sub-assignment of error #2B) there is substantial evidence in the record to show otherwise. Additionally, according to the appellant, the Hearings Official ignored the project’s design features that address the private interest (such as screening/buffering and setbacks) and concluded without explanation that the public benefits (such as tax revenue, multi-use paths and bus stops) were not appropriate considerations in the context of this policy. For more detail, see pages 9-10 of the appeal statement and page 4 of the supplemental appeal statement, as well as the items referenced above under sub-assignment of error #2B. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents argue that the record shows that the proposed development will dominate the view from many areas in the Laurel Hill Valley and will result in maximum impact to both signification vegetation on the site and the view from properties located both east and west of the development. The opponents also challenge the appellant’s assertion that property tax revenues are considered as part of the public interest in the context of this policy. For more detail, see pages 9-12 of the Laurel Hill Valley Citizen’s written materials submitted at the April 1, 2014 appeal hearing, the page 9 and the figures following pages 10 and 19 of their December 18, 2013 written submittal, and the January 17, 2014 letter from Gunnar Schlieder.

Regarding **sub-assignment of error #2D**, the applicable policy states:

That all developments (planned unit developments or subdivisions) be reviewed to ensure maximum preservation of existing vegetation.

Regarding this policy, the Hearings Official found that:

SHS Policy DII.10 contains mandatory language requiring the “maximum preservation of existing vegetation.” As noted above in the findings for Policy DII.7, both the applicant and opponents evidence shows that between 70-76 percent of the entire site will be graded which means the existing vegetation will be removed. Even by subjective standards, that is a large and significant amount of vegetation removal. Granted, some of the vegetation slated to be removed is composed of trees in poor condition and invasive plants. However, the opponents also object to the total number of trees proposed to be removed (between 220 and 242 depending upon whose calculation is selected) – about 1/3 of the trees on the property. See January 17, 2014 letter from Gunnar Schlieder on tree preservation and HE-13 [December 18, 2013 letter from Laurel Hill Valley Citizens with color attachments]. The opponents also specifically object to the removal of healthy trees near the intersection of Laurel Hill Drive and Moon Mt. Drive to accommodate the five dwellings and 22 bedrooms proposed for that area. These trees, according to the opponents, are some of the oldest and largest trees on the property. The applicant does not appear to dispute that many of the largest trees will be lost. On balance, because such a large percentage of the site will be graded and because the units proposed at the top of the ridge will remove a significant number of trees, the Hearings Official agrees with the opponents that this SHS policy is not met. (See pages 25-26 of the Hearing Official Decision)

The appellant asserts that the Hearings Official misapplied the policy by failing to ask and answer whether the proposed PUD preserved existing vegetation to the maximum extent feasible. While the Hearings Official focused on the percentage of the site proposed to be graded, the appellant states that the Hearings Official should have taken into account that 50.3 percent of the site will either have preserved vegetation, or be replanted and reforested after invasive and noxious species are removed. Regarding the five dwellings at the top of the ridge, the appellant states that these units represent 10 percent of all buildings within the nearly 22 acre site and that 90 percent of all development will be located outside of the preserved trees along the ridgeline. According to the appellant, the proposed clustering of units within the center of the site, rather than small single family residences throughout the site ensures maximum preservation of existing vegetation. The appellant further states that the Hearings Official failed to consider that development of the site requires the applicant to improve Laurel Hill Drive and Moon Mountain Drive to bring the streets up to City standard. Such required improvement requires removal of trees, for which the appellant asserts they are being penalized for by the Hearings Official. For more detail, see pages 10-13 of the appeal statement and page 4 of the supplemental appeal statement, pages 14-15 and exhibit 8 from the January 10, 2014 post hearing response letter from Micheal Reeder, and page 20 and Exhibit G of the November 26, 2013 application materials. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents concur with the Hearings Official findings, and assert that the evidence in the record shows that the proposed tree removal is significantly skewed towards removal of the largest and healthiest trees, as well as native trees. They also state that their opposition is based, in part, on the fact that proposal requires grading and complete removal of vegetation on 76 percent of the site to accommodate the installation of large flat spots on the hillside for buildings and associated parking. For more detail, see pages 12-15 of the Laurel Hill Valley Citizen’s written materials submitted at the April 1, 2014 appeal hearing and pages 10-11 of their December 18, 2013 written submittal, and the January 10 and 17, 2014 letters from Gunnar Schlieder.

With regard to each of the above sub-assignments of error, the Planning Commission has the following options:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official's findings, and provide findings to explain how the policy is met
- Alternatively, the Planning Commission could consider whether additional requirements are necessary to meet the policies, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. Additional findings would be necessary.

Assignment of Error #3 – Adequate Screening

The HO erred by finding that the Appellant failed to demonstrate that the proposed development was “adequately screened from surrounding properties” as required by EC 9.8320(3). (HO Decision, Pg 30-31).

The full text of the criterion is provided below, in *italics*:

EC 9.8320(3): The PUD will provide adequate screening from surrounding properties including, but not limited to, anticipated building locations, bulk, and height.

Regarding this criterion, the Hearings Official found:

After considering all of the evidence submitted, the renderings as discussed in the findings for SHS Policy DII.6, and the letters from both the applicant's architect and LHVC discussing disagreements of the accuracy of those renderings, the Hearings Official agrees with staff's conclusion that insufficient information exists in the record to determine whether the screening proposed by the applicant will be effective to mitigate the potential visual impact of the height, bulk and scale of the PUD as proposed.

The primary difficulty with the applicant's compatibility information is that only three locations were portrayed to provide the information on how visible the PUD might be from “surrounding properties.” Two of those perspectives are at the entrances to the development at each terminus of Moon Mt. Drive. Perhaps predictably, they simply show a glimpse of the PUD at grade. The Hearings Official does not find these perspectives representative of the view from surrounding properties, but only representative of what they are – views from the entrances to the PUD. The third perspective is from Verdehill Drive is discussed above, and is in the Hearings Official's opinion too distant to expect that on-site screening could mitigate the visual impact. While staff found the three perspectives to be accurate, they are not fully representative of views from even a portion of the surrounding properties which might be impacted. From this record it is not possible for the Hearings Official to understand whether intervening existing vegetation, existing on-site vegetation, or the on-site vegetated buffers proposed by the applicant will be effective in screening the height, bulk and scale of the proposal from properties that are closer to the subject property but not “adjacent” such as those noted along Augusta Street. EC 9.8320(3) is not met. (See pages 26-30 of the Hearings Official Decision).

The appellant asserts that the Hearings Official erred by concluding there was insufficient evidence in the record to determine whether the project would be adequately screened from surrounding properties, and that the Hearings Official never analyzed whether the proposed screening was adequate. For more detail, see pages 12-15 of the appeal statement.

According to the appellant, the Hearings Official incorrectly assumed that other properties nearby could see the PUD to a greater degree than the views presented by the appellant. The appellant asserts that the appellant could not find any other site in the valley that offered a greater view of the PUD than from atop Verdehill Drive, and that the orientation of the site and location of the development within the site are such that the vast majority of the valley cannot see the PUD. The appellant also asserts that “adequately screened” does not require the development to be completely screened; screening is “adequate” if the development is screened to a reasonable extent considering the use.

Regarding the Hearings Official’s lack of analysis of the proposed screening, the appellant provides a summary of the proposed screening (see pages 13-14 of the appeal statement), and notes that the record contains substantial evidence regarding the adequacy of the proposed screening that the Hearings Official did not examine or explain why it is insufficient. For more details, also see pages 4-5 of the supplemental appeal analysis, pages 4-13 of the January 17, 2014 letter from Micheal Reeder, and page 15 of the January 10, 2014 post hearing response from Micheal Reeder. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents concur with the Hearings Official’s finding that the application lacked sufficient evidence that the proposed PUD would be adequately screened. They note that although the appellant mentions privacy fences, sound attenuating fences, and retaining walls as screening elements, that there are no visual representations of these elements in the record to determine if such elements would provide adequate screening. They also assert that the trees within the proposed 25 foot wide buffer will not reach 50 feet in height until maturity, which could be tens of years, and will only be six to ten feet in height at the time of planting. Furthermore, they state that the inadequacy of the proposed screening is especially apparent in light of the size of the buildings and the scale of proposed development. For more detail, see pages 16-18 of the Laurel Hill Valley Citizen’s written materials submitted at the April 1, 2014 appeal hearing and pages 11-12 of their December 18, 2013 submittal.

Staff notes that the record does not contain views of the proposed development from any other vantage than the three provided by the appellant. There are photos in the record showing views from the site onto other surrounding properties, including a photo of the east side of the Oak Creek Townhomes (located to the immediate west of the subject property) as well as from nearby properties, including the NW Youth Corps site. For more detail, see pages 13 and 2 of the applicant’s compatibility analysis submitted November 25, 2013 provided as exhibit 5 to the appeal statement.

The Planning Commission has the following options with regard to this appeal issue:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official’s findings and provide findings to explain how this criterion is met

- Alternatively, the Planning Commission could consider whether additional requirements are necessary to meet the approval criteria, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. Additional findings would be necessary.

Assignment of Error #4 – Tree Preservation

The HO erred by finding that the Appellant’s Tree Preservation Plan did not comply with EC 9.8320(4)(b) which provides that the “proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible . . . [.]” (HO Decision, Pg 37)

The full text of the criterion is provided below, in *italics*:

EC 9.8320(4): The PUD is designed and sited to minimize impacts to the natural environment by addressing the following:

- (b) *Tree Preservation. The proposed project shall be designed and sited to preserve significant trees to the greatest degree attainable or feasible, with trees having the following characteristics given the highest priority for preservation:*
- 1. Healthy trees that have a reasonable chance of survival considering the base zone or special area zone designation and other applicable approval criteria;*
 - 2. Trees located within vegetated corridors and stands rather than individual isolated trees subject to windthrow;*
 - 3. Trees that fulfill a screening function, provide relief from glare, or shade expansive areas of pavement;*
 - 4. Trees that provide a buffer between potentially incompatible land uses;*
 - 5. Trees located along the perimeter of the lot(s) and within building setback areas;*
 - 6. Trees and stands of trees located along ridgelines and within view corridors;*
 - 7. Trees with significant habitat value;*
 - 8. Trees adjacent to public parks, open space and streets;*
 - 9. Trees located along a water feature;*
 - 10. Heritage trees.*

Although the Hearings Official generally agreed with the staff and applicant regarding compliance with this criterion, on page 37 of the decision the Hearings Official makes the following findings pertaining to the five units with 22 bedrooms proposed at the top of the ridge (which according to the opponents, contains the largest number of trees in good condition, size, height and age):

The five buildings at the top of the ridge and the associated parking appear be intended to meet the applicant’s desire to obtain a minimum of 606 units on the site as a whole. While the applicant’s desire for an economical rate of return on the PUD is an understandable goal, EC 9.8320(4)(b) requires that the PUD “be designed and sited to preserve significant trees to the greatest degree attainable or feasible.” Attempting to place five buildings with 22 bedrooms at the top of the ridge, given the disproportionate removal of significant trees necessary to do so

does not meet that standard. The Hearings Official reminds the parties that I don't deem relevant the applicant's self-imposed requirement to reach 606 units, nor the various planning staff changes and the consequent possibility that the applicant was given conflicting advice on the site plan. The Hearings Official is not unsympathetic impact of conflicting advice from staff if that occurred, but the Hearings Official is also not aware of a design imperative, expressed in this record, that would require dwelling units to be located at the top of the ridgeline. For this reason, that component of the applicant's Tree Preservation Plan does not meet EC 9.8320(4)(b).

The appellant asserts that the five units were placed at the top of the ridgeline at the instruction of staff to comply with EC 9.5500(4)(b) which requires for multi-family developments with 100 feet or more of public or private street frontage, that at least 60 percent of the site frontage abutting a street be occupied by a building or enhanced pedestrian space. Furthermore, the appellant asserts that the provision in EC 9.8320(4)(b) is not as restrictive as the Hearings Official reads it to be. According to the appellant, this criterion does not say that development cannot occur where trees are located or that all significant trees must be preserved. Rather, the question is whether the entire development preserved significant trees to the greatest degree attainable or feasible. For more detail, see page 4 of the appeal statement, page 5 of the supplemental appeal statement, pages 14-15 and Exhibit 8 of the January 10, 2014 post hearing response letter from Micheal Reeder, as well as those items referenced above under sub-assignment of error #2D. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The Laurel Hill Valley Citizens concur with the Hearings Official findings regarding the impact of the five units proposed for the top of the ridgeline. They note that while the five buildings constitute only 10 percent of the total number of buildings, that 50.5 percent of the significant trees to be removed are due to the location of these five buildings. For more detail, see pages 19-20 of the Laurel Hill Valley Citizen's written materials submitted at the April 1, 2014 appeal hearing, and pages 17 and 18 of their December 18, 2013 written submittal, as well as those items referenced above under sub-assignment of error #2D.

Staff notes that the applicant requested non-compliance with EC 9.5500(4)(b) regarding building frontage along Laurel Hill Drive and Moon Mountain Drive (see page 39 of the applicant's November 26, 2013 revised written statement), under EC 9.8320(11)(k). In regards to this standard, staff concurred with the applicant's request (see page 63 of the Hearings Official decision) given the size and characteristics of the site, to allow for design flexibility and natural resource protection. The appellant's argument in the appeal statement that placement of these units at the top of the ridge was to comply with EC 9.5500(4)(b) is in contradiction with the applicant's request in the original applicant materials for proposed non-compliance with EC 9.5500(4)(b) along Laurel Hill Drive.

The Planning Commission has the following options with regard to this appeal issue:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official's findings and provide findings to explain how this criterion is met
- Alternatively, the Planning Commission could consider whether additional requirements are necessary to meet the approval criteria, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. Additional findings would be

necessary.

Assignment of Error #5 – Public Health and Safety

The HO erred by finding that Mr. Schlieder’s January 17, 2014 letter was not rebutted and therefore, “cast doubt on the reliability” of the Appellant’s evidence demonstrating compliance with EC 9.8320(6) which provides that the “PUD will not be a significant risk to public health and safety, including but not limited to soil erosion [and] slope failure . . . [.]” (HO Decision, Pg 49)

The full text of the criterion is provided below, in *italics*:

EC 9.8320(6): The PUD will not be a significant risk to public health and safety, including but not limited to soil erosion, slope failure, stormwater or flood hazard, or an impediment to emergency response.

The Hearings Official found that, as the record stands, there is a significant and unresolved question about whether the applicant’s risk assessment modeling is accurate, based on testimony submitted by Gunnar Schlieder on January 17, 2014 (which asserts that the modeling was flawed because it did not take into account the rainy season and influence of water on the slope once grading cuts are made for the drive aisles and building footprints). According to the Hearings Official, because the applicant did not rebut this information, Mr. Schlieder’s testimony throws sufficient doubt on the applicant’s evidence to at least question its reliability. As such, the Hearings Official concluded that this criterion is not met. For more detail, see pages 47-49 of the Hearings Official decision.

The appellant asserts that the applicant did respond to the concerns raised by Mr. Schlieder in its initial engineering materials, (from November 22, 2014 and January 10, 2014), but did not respond to Mr. Schlieder’s January 17, 2014 letter because he did not raise any new issues that had not already been adequately addressed. Furthermore, the appellant notes that arguments in Mr. Schlieder’s January 17, 2014 letter are fraught with obfuscation, generalizations, and technical jargon with no real illumination of the slope stability issue, and is without substance.

The appellant asserts that the Hearings Official was required to show that the evidence presented by the opponents overcame the appellant’s overwhelming substantial evidence in the whole record, not simply that it “cast doubt.” (*Wal-Mart Stores, Inc. v. City of Bend et al*, 52 Or LUBA 261 (2006)). In this case, the appellant notes that there is substantial evidence in the record that the PUD will not endanger public safety. For more detail, see pages 15-17 of the appeal statement, page 5 of the supplemental appeal statement, Exhibit 13 to the January 10, 2014 post hearing response letter from Micheal Reeder, as well as Exhibit H to the November 26, 2013 application materials. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents assert that the appellant did not adequately respond to the concerns raised by Mr. Schlieder in his testimony as the appellant did not submit slope stability models based on wet season conditions. Additionally, the opponents assert that the appellant’s statement that additional review can be addressed during the PEPI (privately engineered public improvements) and building permit stage is an inappropriate deferral, and results in insufficient information at this stage to determine

that the PUD will not be a significant risk to public health and safety. For more detail, see pages 21-23 of the Laurel Hill Valley Citizen's written materials submitted at the April 1, 2014 appeal hearing, pages 26 and 27 of their December 18, 2013 written submittal, as well as Gunner Schlieder's January 17, 2014 letter.

The Planning Commission has the following options with regard to this appeal issue:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official's findings and provide findings to explain how this criterion is met

Assignment of Error #6 – Geotechnical Analysis/Proposed Noncompliance with Standards

The HO erred by finding that the Appellant did not present argument or evidence rebutting Staff findings regarding EC 9.8320(11)(d) & (k). (HO Decision, Pg 67)

The full text of the criterion is provided below, in *italics*:

EC 9.8320(11): The PUD complies with all of the following:

- (d) EC 9.6710 Geological and Geotechnical Analysis.*
- (k) All other applicable development standards for features explicitly included in the application except where the applicant has shown that a proposed noncompliance is consistent with the purposes set out in EC 9.8300 Purpose of Planned Unit Development.*

Regarding subsection (d), the Hearings Official relied on the findings at EC 9.8320(6) (see Assignment of Error #5, above regarding risk of slope failure) in his decision:

The Hearings Official is not directed to argument or evidence by the applicant that would necessitate deviating from the staff findings. The staff findings for EC 9.8320(11) are adopted by this reference with the exception of the findings of compliance with EC 9.6710. The findings for EC 9.8320(6) demonstrate that there is insufficient information to determine that the applicant's Geological and Geotechnical Analysis meets the standards of EC 9.6710 as to slope stability. Otherwise all parties appear to be satisfied with the staff's findings, and the Hearings Official adopts those findings by reference. (See page 67 of the Hearings Official Decision).

The appellant (see pages 17-18 of appeal statement) asserts that the applicant did provide evidence and argument demonstrating compliance with EC 9.8320(11)(d), and points to a geotechnical analysis prepared by PBS Engineering submitted with the original applicant materials and supplemented in the revised application materials submitted on November 26, 2013. The appellant notes that further support of that analysis is described in the Appellant's argument under assignment of error #5, above. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents concur with the Hearings Official and note that this issue has been discussed in detail under assignment of error #5. For more detail, see page 24 of the Laurel Hill Valley Citizen's written materials submitted at the April 1, 2014 appeal hearing and the items listed above under assignment of error #5.

Regarding subsection (k), as noted above, the Hearing Official adopted the staff findings by reference, which found that this criterion was not satisfied. The Hearings Official noted that, if the applicant responded directly to the staff's findings at EC 9.8320(11), the Hearings Official cannot find that narrative. See pages 61-66 of the Hearings Official's decision for the staff findings.

The appellant asserts that there is substantial evidence in the record that demonstrates the design of the proposed development, including the proposed non-compliance to building height and length standards, parking lot size and configuration limitations, and the limitation on no through motor vehicle movements, achieves the intended purpose of the PUD, in compliance with subsection (k). The appeal statement (pages 18-20) reiterates the applicant's findings to that regard. For more detail, also see pages 1-4 of the January 17, 2014 letter from Micheal Reeder. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponents concur with the staff findings and the Hearings Official's decision regarding subsection (k). For more detail, see pages 23-26 of the Laurel Hill Valley Citizen's written materials submitted at the April 1, 2014 appeal hearing and pages 8, 35 and 36 of their December 18, 2013 written submittal.

The Planning Commission has the following options with regard to this appeal issue:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official's findings and provide additional findings to explain how EC 9.8320(11)(d) and (k) are met

Assignment of Error #7 – Reasonably Compatible and Harmonious

The HO erred by finding that the proposed PUD was not “reasonably compatible and harmonious with adjacent and nearby land uses” as provided by EC 9.8320(13). (HO Decision, Pg 71-72)

The full text of the criterion is provided below, in *italics*:

EC 9.8320(13): The proposed development shall be reasonably compatible and harmonious with adjacent and nearby land uses.

The Hearing's Official's decision includes the following findings (pages 71-72):

The Hearings Official generally concurs with staff's findings for EC 9.8320(13) and adopts those findings by this reference – consistent with the findings set forth below.

Here, the evidence and argument shows that several criteria that reasonably relate to

compatibility, EC 9.8320(2, 3, 4(b), 6 and 11) have not been met. The findings for those criteria are incorporated here by reference. In particular the visual impacts connected with the height, bulk and scale for the proposed design are not reasonably compatible and harmonious with nearby uses. Importantly, the record shows that negative impacts identified in the findings for EC 9.8320(2, 3, 4(b), 6 and 11) cannot be mitigated by providing simply by providing larger areas of vegetated screening on-site. For these reasons, EC 9.8320(13) is not met.

The staff findings (repeated on pages 70-71 of the Hearings Official's decision) state:

Staff notes that the use of the site for multi-family housing is not inherently incompatible with adjacent and nearby land uses. The site itself is somewhat compromised given the overhead electric facilities that cross the site in two places, the adjacent EWEB electric substation and the proximity and associated noise of Interstate 5, which is further demonstrated in the applicant's Compatibility Analysis. In addition, the surrounding area is characterized by a mix of land uses. However, as further described elsewhere in this report and below, there is not enough evidence to conclude that the design of this particular development proposal, especially in terms of bulk, scale, height and amount of paving, is reasonably compatible with the surrounding development.

As previously addressed above at EC 9.8320(2) regarding the South Hills Study policies, at EC 9.8320(3) regarding adequate screening and EC 9.8320(11)(k) regarding compliance with applicable development standards, the majority of the buildings are proposed to be higher than allowed in the R-1 zone, and several are proposed to be wider than typical. Additionally, the proposal also includes expansive areas of paving between the rows of buildings.

The applicant has not provided evidence to satisfactorily demonstrate that the buildings and paving areas are adequately screened from surrounding properties based on the height, location and massing of the buildings and intensity of the development, nor has the applicant provided adequate visual analysis to fully evaluate how the proposed project is reasonably compatible and harmonious with surrounding properties. Furthermore, based on available information provided by the applicant, staff also finds that the intensity of the proposed development, including larger building masses, additional height and the expansive parking areas cannot be adequately screened from surrounding properties.

Staff finds that that the project, as designed, is not compatible with surrounding development. Specifically, staff finds that the scale, mass and overall number of large multi-family buildings, coupled with expansive parking areas result in a level and intensity of development that is not compatible with its surroundings.

The staff memo from January 10, 2014 is also relevant to this appeal issue.

The appellant asserts (pages 20-25 of appeal statement) that staff and the Hearings Official failed to apply the proper standard in determining whether the proposed development "is reasonably compatible and harmonious with the adjacent and nearby land uses." According to the appellant, the

Hearings Official provided no analysis of the standard as applied to the proposed application but instead adopted staff's findings by reference. As stated in the appellant's supplemental appeal memo (dated February 3, 2014), the question that neither staff nor the Hearings Official analyzed was whether to the extent the proposed PUD varied from the objective criteria as allowed by EC 9.8.8320(11)(k), did this variation cause the PUD to result in an unreasonable level of discord or disharmony with the adjacent and nearby land uses such that it would not be "unreasonably compatible." Furthermore, the appellant states that neither staff nor any opponent ever offered any testimony or evidence demonstrating that the proposed modifications were not reasonably compatible. The appellant's appeal materials include copies and references to those items in the record that the applicant relied upon for showing compliance with this criterion. For more detail, see exhibits 1-6 attached to the applicant's appeal statement, as well as pages 4-13 of the January 17, 2014 letter and the January 24, 2014 letter from Micheal Reeder. Also see the April 15, 2014 final argument letter from Micheal Reeder.

The opponent's discussion of this appeal issue is found on pages 27-30 of the Laurel Hill Valley Citizen's written materials submitted at the April 1, 2014 appeal hearing. There, the opponent's note that contrary to the appellant's statement, that multi-family residential is only permitted subject to an approved PUD, which includes consideration of neighborhood compatibility. The opponents also note, for context, that the purpose of the R-1 zone states that it is designed for one-family dwellings with some allowance for other types of dwellings, and that the Laurel Hill Valley Plan also provides policy guidance as it relates to compatibility of certain sized multi-family developments. For more detail, also see pages 29-30 of the Laurel Hill Valley Citizen's December 18, 2013 letter.

The Planning Commission has the following options with regard to this appeal issue:

- Affirm the findings of the Hearings Official
- Reverse the Hearings Official's findings and provide findings to explain how this criterion is met
- Alternatively, the Planning Commission could consider whether additional requirements are necessary to meet the approval criteria, and if so, whether it is feasible and legally justified to establish these requirements as conditions of approval. Additional findings would be necessary.